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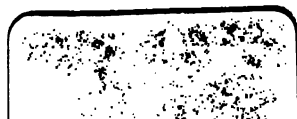
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THE  
GOVERNMENT AND LAWS  
OF THE  
UNITED STATES

COMPREHENDING,  
A COMPLETE AND COMPREHENSIVE VIEW OF THE RISE,  
PROGRESS, AND PRESENT ORGANIZATION OF THE  
STATE AND NATIONAL GOVERNMENTS.



BY  
PROF. WILLIAM B. WEDGWOOD, LL.D.

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## PREFACE.

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A DESIRE to supply the demand of the masses of American citizens for a more thorough knowledge of our government and laws, which has been greatly increased by the late civil war through which we have passed, is the only apology offered for presenting this book to the public at this time. There is no knowledge more eagerly sought, or more difficult to be obtained. It is scattered through the ponderous volumes which fill our law libraries, costing thousands of dollars, which are entirely inaccessible to the masses. It is there given in such form as not easily to be found, and often in language not easily understood.

It has been the design of the author, during the many years of labor and research expended upon this work, to collect the most important facts relating to our government and laws, from the extensive libraries at his command; to present them in such language as to be readily understood, and in such order as to be easily remembered. It is pub-

lished at a price which brings it within the reach of every citizen. While it is principally designed for the use of the citizens at large, it is confidently believed that the student who can answer promptly the five thousand questions which follow the several chapters will find but little difficulty in passing an examination for admission to the bar.

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## INTRODUCTION.

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THE following work contains the substance of a course of over one hundred lectures, delivered by the author before the Law School of the University of the city of New York. In the spring of 1858, he had the honor to receive the appointment of professor of law in that University, which office he held until the summer of 1864. During the continuance of his professorship, he was led, both by duty and inclination, to a thorough investigation of the history and grounds of our civil polity.

The original plan of this work took its rise many years ago, when he first entered upon the practice of the law. He then made a successful effort to disseminate a knowledge of our State and national constitutions and laws among the masses of the people. He prepared and published, in the several States, more than three thousand pages of law matter, the publication of which extended to over one hundred thousand copies, which were read by more than one million American citizens.

He had the satisfaction to find that his efforts were encouraged and patronized by the leading statesmen and jurists in the land; yet the author was well aware that these works were by far too limited, and that their place should be supplied by some work embracing a complete and comprehensive view of the rise, progress, and present organization of our State and national governments. Such a work he attempted to prepare during his professor-

ship in the University. He has frequently been solicited by his former students, and by many eminent jurists, to adapt his lectures to the great mass of American citizens, and have them published in a popular form, for the purpose of supplying the increasing demand for a more extensive and thorough knowledge of the government of our Republic. He has been assured that such publication at the present time would be attended with great advantage to all classes of our fellow-citizens.

It was the intention of the author, in preparing this work, to give the reader a clear and comprehensive view of the government and laws of our Republic, at all the stages of its progress, from the establishment of the first permanent English colony to its present rank among civilized nations. So intimately connected were the colonial governments with the government of England, that a knowledge of that government and its laws is absolutely essential to a complete knowledge of our own. We see the people of the "mother country" gradually rising from a low state of barbarism, abandoning the sacrifice of human beings, breaking away from the authority of the Druids, and attaining a high rank in national power. The seven Saxon kingdoms are united into one monarchy. William, the Norman conqueror, ascends the throne, still occupied by his descendants. The barons demand from King John *magna charta*, the bulwark of English liberty. The war between the houses of York and Lancaster is terminated. Henry VII. ascends the throne, during whose reign America is discovered.

Henry VIII. and his three children, Edward, Mary, and Elizabeth, fill the throne in succession. The virgin queen rules for more than forty years, leaving an indelible impression upon her own nation, and giving the name Virginia to a vast territory in America. James, her successor, divides the territory into North and South Virginia. Charters are granted to two separate companies. The first permanent colony is established at Jamestown, and the first legislative body on the continent there assembled. Colo-

nies are formed in North Virginia. They establish a government. It is at first Democratic, then Republican. Charles I. ascends the throne of England. A civil war breaks out between the king and parliament. South Virginia sympathizes with the king. The colonies in North Virginia form a confederation, under the title of "The United Colonies of New England." Five years of civil war, and Charles is a prisoner. He is charged with treason, condemned and beheaded. The monarchy is abolished. A republic is established. Cromwell is at the head of the army. He seizes the sovereign power; disperses parliament; summons a new parliament; publishes a new constitution; assumes the title of Protector. After exercising the sovereign power for nine years, Cromwell, the Protector, dies. The monarchy is restored. Charles II. ascends the throne. He is acknowledged as king by the American colonies. He takes possession of the New Netherlands for the Duke of York. He grants liberal terms of capitulation. The name is changed to New York. Trial by jury is introduced. New York City is incorporated.

The Duke of York succeeds Charles II., with the title of James II. His reign is short and inglorious. Jeffreys is appointed chief-justice, afterwards lord-chancellor, who is the most unscrupulous and profligate judge in English history. Charters of the colonies are demanded and surrendered. William, Prince of Orange, is invited to assume the government of England. Ireland adheres to James. The battle of the Boyne is fought. William is victorious. Ireland submits to William. The war between William and James extends to America. The French colonies, with their Indian allies, carry on war against the English colonies for seven years, during which time the colonies suffer great losses. The French colonies continue to encroach upon the English colonies. Another war commences. At length, the French surrender their most valuable possessions in America to the English.

The English colonies are dissatisfied with the arbitrary

conduct of the English government. Numerous causes arise leading to revolution. In 1774 a Continental Congress meets. They pass spirited resolutions. They send an address to the king and to the people of England. The action of that government is not satisfactory. The blood of the Revolution begins to flow. On Friday, June 7, 1776, a resolution is offered in the Continental Congress, declaring the colonies independent. The birthday of the Republic has come. The cord which bound her to the mother country is severed. The resolution is made public, July 4, 1776. The declaration of independence is proclaimed. Articles of confederation are adopted. Independence is achieved. Constitutions are formed. Their purpose is declared. Inalienable rights are defined. Self-evident truths are declared. The people are the source of political power. Three separate departments of government are formed. The powers and duties of each are defined. Two grades of government are established. The powers and duties of each are settled. The government is one and indivisible, whether it acts through its State or national grades, or its legislative, executive, or judiciary departments.

The sources of American law by which the nation is governed. The common and statute laws of England before the Revolution are claimed as a birthright. All that is applicable to their new form of government is retained. Parliament, Congress, and the State legislatures, are constructed after the same model. Their organization, the method of making laws in each, their legislative journals, and the rules and usages by which they are governed, are nearly the same. Since the Revolution, each State has its statute law, comprising the acts passed by the legislature of the State; and its common law, comprising the decisions of its courts. The nation also has its statute laws and its common law.

Drawn from these sources of American law, we have endeavored to present to the reader a clear and concise view of the election of State and national officers, with

their official duties—Families, the foundation of civil society—Their influence—They begin with marriage—The marriage contract—Who may be parties—How celebrated—Effect of marriage upon the property of the parties—Their reciprocal rights and duties—How far the husband is bound by the contracts of the wife—Duties of parents to their minor children—The right to their services—The extent of their power to govern and correct the child—The rights of the minor child—By what contracts bound—Marriage the only source of legitimacy—Parents and children reciprocally bound to support each other—Guardians of infants—Their powers and duties—Dissolution of the marriage contract—General rules of law governing contracts—Real property—Sources of title—The feudal system in England—Its origin and history—Classes of estates—Transfer by deed—How made, executed, acknowledged, and recorded—Its contents and covenants—Estates in dower—Estates by the courtesy—Descent of real property—Emblements and fixtures—The right of eminent domain—The right of way—The rights of proprietors of the banks of flowing rivers.

Last wills and testaments—How made and executed—When they take effect—In what court proved and recorded—Letters testamentary—Letters of administration—Powers and duties of executors and administrators—Inventory of the estate—Sale of personal and real property for the payment of debts and legacies—Revocation of wills.

General partnerships—Special partnerships—The contract of bailment—Classes of bailment—Degree of care required—Ordinary care—Extraordinary care—Slight negligence—Gross negligence—The responsibility of the bailee—Innkeepers and guests—The rights and duties of each—Common carriers—Their liability—Common carriers of passengers—Their responsibility in case of accident—The law of the road—Travel on the highway of nations—Marine insurance—Fire insurance—Life insurance—The logic of pleading—No legal remedy without plead-

ings—Actions—Orders of arrest—Replevin—Injunctions—Attachments—Trial of actions—Executions—Appeals.

Commercial paper, comprising promissory notes, bank-bills, bills of exchange, and checks—Their history—When within the statute passed during the reign of Queen Anne—When not within the statute—Peculiar privileges attached, if within the statute—When negotiable—Effect of negotiability—Different modes of indorsement—Conditional liability of the indorsers—Conditions precedent to absolute liability—When a protest is necessary—Notice of dishonor—What will excuse notice—Accommodation paper—Actions on commercial paper—What facts must be alleged—What defences may be imposed—The allegations and denials form the issue—Evidence—It demonstrates to the jury the truth or falsity of the points at issue—Evidence admitted—Evidence rejected—Order of introducing evidence—The best evidence required—How witnesses are compelled to attend—Their competency—Their credibility—They may be perfectly competent, and yet entitled to no credit with the jury—Witnesses may be impeached—Mode of impeaching a witness—Upon whom lies the burden of proof—The jury are to weigh the evidence—Direct examination—Cross-examination—Leading questions—Hearsay evidence—Presumptive evidence—*Salus populi suprema lex*, the safety of the Republic the supreme law.

The candid and judicious reader will make due allowance for the difficulties of investigating subjects so extensive and so laborious.

THE  
GOVERNMENT AND LAWS  
OF THE  
UNITED STATES.

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CHAPTER I.

THE MOTHER COUNTRY.

1. In order to acquire a complete knowledge of the Government of the Republic of the United States of America, it will be necessary for us to trace its development from its earliest history to the present time. A knowledge of the government of England is next in importance; for it is the government of our ancestors, and the country from which we have derived our language and literature, and our civil and religious institutions.

2. The history of no country, except our own, in ancient or modern times, is calculated to excite deeper interest than that of England. We there see the gradual rise of a people from a low state of barbarism to the highest rank in national power, commercial wealth, and intellectual and moral greatness.

3. That country was little known to the rest of the world, until the time of its conquest by the Romans,

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1. In order to acquire a complete knowledge of our Government, what is necessary? The knowledge of what government is next in importance? Why?

2. What do we see in the history of England?



under Julius Cæsar, fifty-five years before the commencement of the Christian era. At the time of the conquest, the people were rude and barbarous, divided into numerous tribes, clothed in skins of animals. Their religion was *Druidism*, a cruel superstition. The Druids, their priests, possessed great authority over them. They taught the doctrine of the transmigration of souls, and offered in sacrifice human beings in great numbers.

4. In the fifth century, the Romans took their final leave of Britain, four hundred and sixty-five years after the landing of Julius Cæsar. Soon after, the Scots and Picts, from the northern part of the island, invaded and ravaged the country. The Britons applied for assistance to the Saxons, inhabiting the north of Germany. Assistance was granted, and the invaders were repulsed. The Saxons, finding the country superior to their own, procured re-enforcements, and took possession of it for themselves.

5. About one hundred and fifty years thereafter, the Saxons established seven Saxon kingdoms, known as the Heptarchy. In the year 827, these kingdoms were united into one monarchy, under the name of England. The royal throne was thereafter filled by a succession of monarchs, among whom was Alfred the Great, one of the best sovereigns that ever sat on a throne. He was the greatest warrior, legislator, and scholar of the age in which he lived.

6. In the year 1041, Edward the Confessor ascended the throne, who died in 1066, having bequeathed the

3. At what time did that country become known to the rest of the world? At the time of the conquest, what was the condition of the people? What was their religion? What did the Druids teach? What did they offer in sacrifice?

4. When did the Romans take their final leave of Britain? By whom was it soon after invaded? To whom did the Britons apply for assistance? What was the result?

5. What did the Saxons establish? When were they united into one monarchy? Under what name? What was the character of Alfred the Great?

6. In what year did Edward the Confessor ascend the throne? To

crown to William, duke of Normandy. The nobility and clergy selected and proclaimed Harold king. William resolved to maintain his claim to the crown of England by force of arms. Harold was defeated and slain at the battle of Hastings. The nation soon submitted to the sceptre of William; who was thereafter called THE CONQUEROR, and whose descendants have to this day occupied the throne of England.

7. In the year 1215, the barons formed a confederacy, and demanded of King John the ratification of a charter of privileges, which is known as *magna charta*, or the great charter. The king at first refused; but finding that the barons would proceed to open war, signed and sealed the charter, which secured important liberties and privileges to every order of men in the kingdom, and which is regarded as the great bulwark of English liberty.

8. In the year 1471, the art of printing was introduced into England by William Caxton.

9. In the year 1485, Edward IV. died, leaving two sons, the eldest but thirteen years of age, who was proclaimed king, with the title of Edward V. Richard, the brother of Edward IV., having been appointed protector, seized the crown, on pretence that Edward V. and his brother were illegitimate, and he was proclaimed king, under the title of Richard III. Soon after the young princes disappeared. They were supposed to have been murdered, by the order of Richard.

whom did he bequeath the crown? Who was proclaimed king in opposition to William? What did William resolve to do? What was the result? What name was thereafter given to William? Whose descendants now occupy the throne of England?

7. What action did the barons take in 1215? By what name is this charter known? Why did King John grant this charter? What was secured by this charter? How is it considered?

8. In what year was the art of printing introduced into England? By whom?

9. In what year did Edward IV. die? How many sons did he leave? What was the age of the eldest son when he was proclaimed king? Under what title was he proclaimed king? Who was appointed protector? Under what pretence did he seize the crown? Under what title was he proclaimed king? What became of the two sons of Edward IV.?

10. Richard III., who waded to the throne through the blood of his nearest relatives, found an avenger in the Earl of Richmond, the only surviving heir of the house of Lancaster. The armies of the two rivals met, a desperate battle was fought, and Richard was defeated and slain. His rival was immediately crowned on the battlefield by the title of Henry VII. This battle terminated the long and bloody conflict between the houses of York and Lancaster. The two houses were soon after united by the marriage of Henry VII. with the daughter of Edward IV. It was during the reign of Henry VII. that America was discovered.

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## CHAPTER II.

### DISCOVERY OF AMERICA.

1. THE existence of the continent of America, and its adjacent islands, was concealed from the civilized world for 5,496 years from the Mosaic account of the creation, and for 1,492 years after the beginning of the Christian era. In the month of October, 1492, Christopher Columbus, a native of Genoa, in Italy, discovered a small island, now called St. Salvador, lying near the Gulf of Mexico, and about two hundred miles from the continent. He soon after discovered Cuba and San Domingo. The following year he discovered Jamaica, and some other small islands. He took formal possession of these islands, for and in the name of Ferdinand and Isabella, king and queen of Spain.

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10. How did Richard III. reach the throne? In whom did he find an avenger? What was his fate? Who then became king of England? Under what title? What did the battle between Richard III. and Henry VII. terminate? How were the two houses soon after united? During the reign of what king was America discovered?

1. In what year of the world, and of the Christian era, was America discovered? What discoveries were made by Columbus?

2. In the year 1496, Henry VII., king of England, gave authority to John Cabot, and his son, Sebastian Cabot, "to sail to all parts of the east, west, and north, under the royal banner of England, to discover countries of the heathen unknown to Christians; to set up the king's banner there; to occupy and possess, as his subjects, such places as they could subdue;" giving them the rule and jurisdiction of the same, to be holden on condition of paying to the king a part of their gains.

3. In the year 1497, the Cabots discovered the continent of America. The point of land first discovered by them was called *Prima Vista*, and is generally believed to be part of Labrador or Newfoundland. They sailed along the coast towards the Gulf of Mexico, and having procured a valuable cargo, they returned to England, carrying several of the natives with them. This discovery constituted the foundation of the title by which England afterwards claimed the territories which they subsequently acquired. In 1498, Columbus discovered South America.

4. But little was accomplished by the subjects of the government of England, in making discoveries, during the subsequent eighty years. In 1509, Henry VII. died, and Henry VIII. ascended the throne, at the age of eighteen. At that time, the treasury was well supplied, the nation was at peace, and the country was prosperous. The young king was of good personal appearance, accomplished manners, possessed of fine talents and considerable learning. As his character was developed, he

2. To whom did Henry VII., king of England, grant a charter? When? What were they authorized to do under their charter? Upon what condition were they to hold the lands they should discover, and of which they should take possession?

3. In what year did the Cabots discover North America? What place did they first discover? Of what did this discovery form the foundation? In what year did Columbus discover South America?

4. For what time were further discoveries suspended by the English? Who succeeded Henry VII.? When? At what age? What was the condition of England at that time? What description is given of the young king? What did he subsequently prove to be?

proved himself to be an unprincipled and cruel tyrant. His government was but little short of despotism.

5. At the age of thirty, he wrote a book on the Seven Sacraments against Luther, the Reformer, which pleased the pope so much, that he conferred on him the title of "Defender of the Faith," a title which his successors have ever since retained. He married six wives. His first wife was Catharine of Aragon, the widow of his eldest brother. After living with her for eighteen years, he professed to feel conscientious scruples, on account of her having been the wife of his brother, and applied to the pope for a divorce. The pope failing to grant the divorce, the king caused a court to be held, which pronounced his marriage invalid. The papal jurisdiction in England was immediately abolished (1534), the monasteries suppressed, and the king was declared the supreme head of the English Church. Though Henry ceased to be a Roman Catholic, he was far from being a Protestant. He arrogated to himself infallibility, and condemned to death both Catholics and Protestants who ventured to maintain opinions in opposition to his own.

6. His second wife was Anne Boleyn. In less than three years after his marriage, he caused her to be condemned and beheaded. The next day after her execution he was married to Jane Seymour, who died soon after giving birth to Prince Edward. His fourth wife was Anne of Cleves, from whom he was soon after divorced. His fifth wife was Catherine Howard, who was condemned and executed, under the charge of adultery. His sixth wife was Catherine Parr, who survived the

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5. What book did he write? At what age? What title did the pope confer upon him? How many wives did he marry? Who was his first wife? How long did he live with her? On what ground did he apply to the pope to grant a divorce? When the pope failed to grant the divorce, what did the king then do? Of what was the king then declared the supreme head? What did he arrogate to himself? Whom did he condemn to death?

6. Who was his second wife? How did he dispose of her? Who was his third wife? Who was his fourth wife? How did he dispose of her? Who was his fifth wife? How did he dispose of her? Who was his

king. At his death, he left three children—Mary, daughter of Catharine of Aragon; Elizabeth, daughter of Anne Boleyn; and Edward, son of Jane Seymour. Edward succeeded his father, with the title of Edward VI. At his death, Mary succeeded to the throne (1553), and the Catholic religion was restored. After a reign of five years, she died, leaving few to lament her death.

7. Mary was succeeded by Elizabeth, in 1558. Her accession to the throne was hailed by the nation with joyful acclamations. She had a long and auspicious reign of more than forty years, during which tranquillity was maintained in her dominions. The Protestant religion was restored and protected. The Church of England was established in its present form. The nation rose rapidly from the rank of a secondary kingdom to a level with the first States of Europe, and attained a higher state of prosperity than it had ever before known, in agriculture, commerce, the arts, literature, and science. This period, which has been considered as the Augustan age of English literature, was made illustrious by the great names of Hooker, Bacon, Spenser, and Shakspeare. Copernicus, Galileo, and Kepler were also the contemporaries of Elizabeth.

8. In the year 1578, being eighty-one years after the discovery of the continent of America by the Cabots, Queen Elizabeth granted a charter to Sir Humphrey Gilbert, authorizing him "to discover and take possession of all remote and barbarous lands unoccupied by any Christian power or people; vesting in him the full right of property in the soil of those countries of which he should

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sixth wife? What children did he leave at his death? Who succeeded to the throne? Who succeeded Edward VI.? What was the character of her reign?

7. Who succeeded Mary? When? How long did she reign? What religion did she favor? What effect did her reign have upon the nation? What effect upon their literature? What are the prominent names of literary men of England at that time?

8. When was the second expedition sent to America from England? How long after the discovery by the Cabots? By whom, and to whom, was the charter granted? Of what lands did it authorize him to take

take possession; empowering him, his heirs and assigns, to dispose of whatever portion of those lands he should judge meet, to persons settled there, in fee-simple, according to the laws of England; and ordaining that all the lands granted to Gilbert should hold of the crown of England, by homage, on payment of one-fifth part of the gold and silver ore found there.

9. The charter also gave Gilbert, his heirs and assigns, full power to convict, punish, pardon, govern, and rule, by their good discretion and policy, as well in cases capital or criminal as civil, all persons who should, from time to time, settle within the said countries. It declared that all who settled there should have and enjoy all the privileges of free denizens and natives of England, any law, custom, or usage to the contrary notwithstanding; and, finally, it prohibited all persons from attempting to settle within two hundred leagues of any place which Sir Humphrey Gilbert, or his associates, should have occupied, during the space of six years.

10. Invested with these extraordinary powers, Gilbert crossed the ocean, and arrived at St. John's harbor, Newfoundland. There were in the harbor thirty-six vessels, belonging to various nations, who refused him entrance. He then sent a boat to them, assuring them that he had no ill designs, and that he had a commission from Queen Elizabeth. They then consented, and he sailed into the port. Having pitched his tent on shore, in sight of the shipping, and being attended by his own people, he summoned the merchants and masters of vessels to be present. When they were assembled, he caused his commission to be read and interpreted to the foreigners who spoke a dif-

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possession? What rights in the soil did the charter vest in him? What did it empower him to do with these lands? How, and upon what conditions, were these lands to be held?

9. What powers of government over the people who should settle there were given by the charter to Sir Humphrey Gilbert? What rights did the charter secure to settlers? What did the charter prohibit?

10. What harbor in America did Gilbert first enter? What was the ceremony of taking possession of the harbor, and country around it?

ferent language. A turf and twig were then delivered to him, and proclamation was immediately made that, by virtue of his commission from the queen, he took possession of the harbor of St. John's, and two hundred leagues every way around it, for the crown of England.

11. He then, as the authorized governor, proceeded to deliver three laws, to be in force immediately: 1. That public worship was established, according to the laws of England; 2. That the attempting any thing prejudicial to her majesty's title should be considered high treason; 3. That if any person should utter words to the dishonor of her majesty, he should be punished, and have his ship and goods confiscated.

12. When the proclamation was finished, obedience was promised, both by Englishmen and strangers. Not far from the place of meeting, a pillar was afterwards erected, upon which was engraved the arms of England. For the better establishment of this possession, several parcels of land were granted by Sir Humphrey Gilbert, by which the inhabitants were guaranteed grounds convenient to dress and dry their fish, for which they covenanted to pay a certain rent. This formal possession, in consequence of the discovery of the Cabots, was the foundation of the right of the crown of England to the territory.

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### CHAPTER III.

#### FIRST ATTEMPTS TO FORM SETTLEMENTS IN AMERICA.

1. ON the return of Sir Humphrey Gilbert, the frigate commanded by him foundered in a storm, and all on

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11. What three laws did he then promulgate?

12. What was erected near the place of meeting? What grants were made to persons in the harbor? What was the foundation of the claim of England to this territory?

1. What calamity happened to Sir Humphrey Gilbert? To whom



board perished. His brother-in-law, Sir Walter Raleigh, obtained from Queen Elizabeth a transfer of his charter. He equipped and sent out two vessels, under Amadas and Barlow, to obtain information of the coast, the soil, and the inhabitants of the region he designed to colonize. On their return, they gave a most glowing account of the country they had discovered. Delighted with this description, and with the prospect of possessing the territory, Queen Elizabeth was pleased to honor both the country and herself by bestowing upon it the name of Virginia, as the discovery had been made under a virgin queen.

2. In 1585, Raleigh sent out another expedition, consisting of seven ships, under the command of Sir Richard Grenville, with Ralph Lane as governor of the colony. They landed one hundred and seven persons, to form a plantation, under the government of Mr. Lane. These colonists were soon after carried back to England. Fifty other persons were left from a ship sent out with supplies, and nothing was ever heard of them.

3. In 1587, Raleigh sent out a third expedition, consisting of one hundred and seventeen colonists, who landed at Roanoke, and commenced a plantation there. No trace was ever found of this unfortunate colony.

4. To the close of the fifteenth century, the whole country had been known as Virginia. In 1603, Queen Elizabeth died, in the forty-fifth year of her reign, and the seventieth year of her age. She was succeeded by James VI., of Scotland, who took the title of James I., of England. James had scarcely arrived in England when a

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was his charter transferred? For what purpose was an expedition sent out by Sir Walter Raleigh? What account did they give of the country they had discovered? What name did Queen Elizabeth give to the country? Why?

2. When did Raleigh send out a second expedition? Of what did it consist? How many emigrants were landed? What became of them?

3. Of how many colonists did the third expedition consist? Where did they land? What became of this colony?

4. To what time was the whole country known as Virginia? In what year did Queen Elizabeth die? By whom was she succeeded? For what

conspiracy was discovered for subverting the government, and placing his cousin, Arabella Stewart, on the throne. Sir Walter Raleigh was accused of being engaged in this plot. He was cast into prison, and some time after he was barbarously beheaded, at the instigation of the king.

5. King James divided what was formerly known as Virginia, extending from the thirty-fourth to the fifty-fifth degrees of latitude, into two districts, nearly equal. One was called the south colony of Virginia, and the other the north colony. The king granted a charter to Sir Thomas Gates and others, authorizing them to settle any part of South Virginia they should choose. The charter vested in them a right of property to the lands extending along the coast fifty miles on each side of their place of settlement, and extending one hundred miles into the interior. The king also granted a charter to several knights, gentlemen, and merchants of Bristol, Plymouth, and other parts of the west of England, authorizing them to settle any part of North Virginia they should choose, granting to them the same rights as were granted to the proprietors of South Virginia.

6. The leading characteristic of James was his love of arbitrary power. The divine right of kings to govern their subjects without control, was his favorite topic in conversation and in his speeches to parliament. The supreme government of these two colonies which were to be settled was vested in a council, residing in England, named by the king, with laws and ordinances given under

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purpose was a conspiracy formed against James I.? What became of Sir Walter Raleigh?

5. Into what two districts did King James divide the territory called Virginia? What were these divisions called? What was the whole extent of both? To whom did James grant a charter of South Virginia? What part of the territory did the charter authorize them to settle? What right of property did the charter vest in them? To what extent? To whom did James grant a charter of North Virginia? What were the conditions of the grant?

6. What was the leading characteristic of James I.? What was his favorite topic in conversation, and in his speeches to parliament? In whom was the supreme power of governing the colonies vested? By whom named? With what laws? To whom was the subordinate juris-

his own signature. The subordinate jurisdiction was committed to a council residing in America, which was also nominated by the king, and to act in accordance with his instructions. We may now regard the colonies of North and South Virginia, or Virginia and New England, as they were afterwards called, as forming two separate histories.

7. The proprietors of the royal charter of South Virginia, in 1606, sent out three ships, under the command of Christopher Newport, containing one hundred colonists. The royal instructions were contained in a sealed box, with the names of the colonial council. They were ordered not to break the seal until twenty-four hours after they had effected a landing. They selected a location on James River, about forty miles from its mouth, to which they gave the name of Jamestown, in honor of their king. They organized their council, and appointed Edward Wingfield their president. The extreme heat of summer, and the intense cold of the succeeding winter, were alike fatal to the colonists. Before any other emigrants arrived, sixty-two of the one hundred who first landed had died. One hundred and twenty emigrants, with additional supplies, arrived the following year. The patentees to whom the charter was granted applied for and obtained a new charter, with more ample provisions. The council under the new charter appointed Lord Delaware governor for life. They fitted out nine ships, having on board five hundred emigrants. A part of this expedition arrived at Jamestown about the middle of August, 1609.

8. Soon after the arrival of these new emigrants, the

diction committed? By whom named? How may these two colonies be hereafter regarded?

7. When did the proprietors of the charter of South Virginia first send out a colony? How many colonists were sent out? What location did they select? What effect did the climate have upon these emigrants? How many colonists arrived the following year? For what did the proprietors of the charter apply to James? Whom did the council appoint governor of the colony? How many emigrants did they then send out? When did they arrive?

colony was involved in disorder and insubordination. The Indians destroyed the colonists wherever they could find them. The provisions of the colony were imprudently wasted, and a severe famine ensued. Four hundred and forty of the colonists died in a period of six months, by war, famine, and pestilence, leaving but fifty survivors. The small remnant of the colony were in a famishing condition. They at last determined to abandon the country. On the 7th of June, 1610, they fired their parting salute, buried their ordnance, and embarked in four small vessels, and about noon floated down the river with the tide. This settlement may be considered at this time abandoned. At that time there was not a single English colony established within the present territory of the United States.

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## CHAPTER IV.

### FIRST PERMANENT ENGLISH COLONY IN AMERICA.

1. A PERIOD of one hundred and thirteen years after the discovery of North America by the Cabots, and twenty-five years after Raleigh planted the first colony, had passed before the first permanent English colony was established on the present territory of the United States. On the evening of the 7th of June, 1610, Lord Delaware arrived at the mouth of the James River with three ships and one hundred and fifty colonists. They met the colonists who were returning to England, whom they per-

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8. In what was the colony soon after involved? What followed? How many of the colonists died in a period of six months? What was the condition of the remaining colonists? When did they abandon their settlement? Was there any English colony at that time within the present territory of the United States?

1. How long after the discovery of the continent by the Cabots was the first permanent English colony established in the present territory of the

suaded to return with them to Jamestown. They soon after landed, and established the first permanent settlement, on Friday, the 8th day of June, 1610. This may be regarded as the birthday of the colonies.

2. In May, 1611, three hundred more emigrants arrived; in August, two hundred and eighty men, and twenty women, also arrived. Hitherto, no right of property in land had been established. The fields that were cleared had been cultivated by the joint labor of the colonists. The produce was carried to the common storehouse, and distributed weekly to each family. The lands were divided into lots, and one of these lots granted to each colonist, as his own private property. From this time, the colony advanced rapidly.

3. After the death of Lord Delaware, Mr. Yearly was appointed captain-general of the colony. He arrived in April, 1619, and proceeded immediately to convoke a colonial assembly. The assembly met at Jamestown, on the 19th of June. This was the first legislature that ever assembled in America. In 1620, a Dutch man-of-war entered the colony, and landed twenty negro slaves, which were purchased by the planters. This was the beginning of negro slavery in the colonies.

4. The full tide of prosperity seemed now to be enjoyed by the colonists. But this was to be of short continuance. The Indians had matured a scheme for the extermination of the colony at a single blow. In one hour, four hundred and forty-seven of the colonists were slain, almost without knowing by whose hands they fell. The colonists, roused to vengeance, attacked their enemies, and drove them far

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United States? How long after Raleigh planted the first colony? What may be regarded as the birthday of the colonies?

2. When did other colonists arrive? How were their fields cleared and cultivated? How were the lands afterwards divided? What was the effect?

3. Who was appointed captain-general after the death of Lord Delaware? What action did he take? When and where did the first assembly meet? When was slavery introduced into this colony?

4. What was now the condition of the colony? What plot had been formed among the Indians? How many colonists were slain in a single

into the wilderness; but their numbers melted away, and their settlements were reduced from eighty to eight. King James, also about this time, dissolved the company, and vacated their charter. He issued a new commission for the government of Virginia. The governor and council were appointed during the king's pleasure. No assembly was allowed. At this time, about nine thousand colonists had settled in the colony, and only about one thousand eight hundred survived.

5. In 1625, James I. died, and he was succeeded by Charles I., who was then in the twenty-fifth year of his age. It was the misfortune of Charles to inherit despotic principles from his ancestors, and to be educated in a servile and profligate court. Public opinion had been undergoing a great change, and many of his subjects were extremely jealous of their civil and religious liberties. He was slow to learn the important lesson, that the influence of authority must ultimately bend to the influence of opinion. England was soon after involved in war with Spain. Parliament refused to grant him sufficient supplies in carrying on the war. He dissolved the parliament, and claimed the right to act independent of their authority. This claim struck at the vital principles of a free government, and the people became fully sensible of the danger to which their liberties were exposed. The Earl of Stafford became the chief counsellor of the king, who was the most formidable enemy of the liberties of the people. Archbishop Laud had the principal influence in ecclesiastical affairs. The current of public sentiment was now running strongly in favor of a more simple form

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hour? What followed this massacre? What action did King James take about this time? What was the number who had settled in the colony up to this time? How many survived?

5. When did James I. die? By whom was he succeeded? What was the misfortune of Charles I.? What change had taken place in public opinion? What lesson was Charles slow to learn? With what nation was England soon after involved in war? What action did parliament take? What action did the king take? At what did this claim strike? Who became the chief counsellor of the king? Who had the principal

of worship. Laud overloaded the Church with new ceremonies, which he enforced with the most intolerant zeal.

6. In 1640, after eleven years' intermission, the king found it necessary to convoke a parliament. The House of Commons, instead of listening to his demands for supplies, presented the public grievances, under three heads: 1. The broken privileges of parliament; 2. Illegal taxation; 3. The violence done to the cause of religion. Charles, perceiving that nothing favorable to him would result from their deliberations, dissolved this parliament, and soon after convoked another. Parliament then ordered the arrest of Stafford and Laud, for treason, in attempting to subvert the constitution and introduce arbitrary power. They were both condemned and beheaded.

7. The king procured the impeachment of one member of the House of Lords and five members of the House of Commons, and proceeded, in person, to the House, to arrest them, accompanied by two hundred armed men, whom he left at the door. He entered the House, and ordered the speaker to point them out. The speaker declined to comply with his majesty's command. The king withdrew without effecting his object. This abortive attempt completed his degradation. He afterwards apologized to parliament for his conduct; but the day of reconciliation had passed. They were now prepared, not only to confine his power within legal bounds, but also to strip him of his constitutional authority.

8. Both parties now resolved to stake the issue of the contest on the sword. In 1642, the standard of civil war

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influence in ecclesiastical affairs? How was the current of public opinion running? What action did Laud take?

6. When did the king convoke a new parliament? What action did the House of Commons take? What action did Charles then take? What arrests did the next parliament order? Under what charge? What was the result?

7. What impeachments did the king procure? How did he attempt to arrest them? What demand did he make of the speaker? Did the speaker comply? What apology did he afterwards make? What were parliament now prepared to do?

8. What did both parties resolve to do? When was the standard of

was raised. The cause of the king was supported by three-fourths of the nobility, and many of the gentry, with the bishops and advocates of Episcopacy, and by most of the Catholics. The cause of parliament was supported by the yeomanry, merchants, and tradesmen, and by the Puritans and other dissenters. The supporters of the king were called Cavaliers, and the supporters of parliament were called Roundheads. After a fierce and bloody civil war had raged for nearly five years, the king fell into the hands of his enemies. He was tried for treason, and sentenced to be executed by having his head severed from his body. Having laid his head upon the block, one of the masked executioners severed it from his body by a single blow; the other, holding it up, exclaimed: "Behold the head of a traitor!"

9. The death of the king was soon followed by the abolition both of the monarchy and the House of Lords, by the House of Commons, and a Republican government established. It was publicly proclaimed that the supreme authority of the nation resided in the representatives of the people, and that it should be accounted treason to give any person the title of king without the authority of parliament. Oliver Cromwell was at the head of the army. The power which the parliament had wrested from the king was, by Cromwell's management, transferred to the army. This parliament had been in session for twelve years, and had lost the confidence of the people. It had been subservient to the views of Cromwell; but becoming jealous of him, had formed the design of reducing the army, intending, by that means, to diminish his power. Cromwell, perceiving their object, and being secure of the attachment of the army, resolved on seizing

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civil war raised? By whom was the cause of the king supported? By whom the cause of parliament? What names were given to these parties? How long did this civil war continue? Which party became victorious? What became of Charles I. What were the circumstances of his execution?

9. What followed the death of the king? What public proclamation was made? Who was at the head of the army? Why did parliament



the sovereign power. Taking with him three hundred soldiers, whom he left at the door, he entered the House, and listened awhile to the debates. He then started up, stamped on the floor, gave a signal for his soldiers to enter, and addressing himself to the members, he said: "Get you gone. Give place to honester men. I tell you, you are no longer a parliament; the Lord has done with you." Having turned out all the members, he ordered the doors to be locked.

10. Cromwell having seized the reins of government, gave his subjects a new parliament. The congregational ministers in the several counties took the sense of their churches, and made returns of the names of such persons as were deemed qualified. From these, the council, in the presence of Cromwell, selected one hundred and sixty-three representatives, who were summoned to attend. This parliament is sometimes called Barebone's parliament, from a leading member, a leather-dresser, whose name was Praise-God Barebone. This parliament assembled on the 4th of July, 1653, and was dissolved in the following December. At the time of the dissolution, a new constitution was published, and Cromwell assumed the title of Protector. He was assisted by a council of twenty-one members.

11. He administered the government with great energy and ability, and became the most able and powerful potentate of his time in Europe. After having usurped the government for nine years, he died, in the sixtieth year of his age. Richard Cromwell, after the death of his father, was proclaimed Protector; but after a few months, he resigned the office, and retired to private life. In 1660,

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attempt to reduce the army? What did Cromwell then resolve upon? How did he effect his object? What did he say to parliament?

10. What did Cromwell do after he had seized the reins of government? How did he select the members of this parliament? What is this parliament sometimes called? Why? When did this parliament assemble? When was it dissolved? What was published at the time of its dissolution? What title did Cromwell assume?

11. How did Cromwell administer the government? For what time? Who was proclaimed Protector after Oliver Cromwell's death? How long

Charles II., now thirty years of age, was restored to the throne of his father.

12. Charles I., when he ascended the throne, placed the government of Virginia under the immediate direction of the crown. He appointed a governor and council, and ordered that all process should issue in his own name. In 1639, the Colonial Assembly was restored, and allowed to enact a body of laws for the colony. For this favor, the colonists manifested a strong attachment to their king. During the civil war, they professed great sympathy for him. Parliament became irritated by their adherence to the royal cause, and sent a squadron to reduce them to obedience. They capitulated on the most favorable terms. Under the articles of capitulation, the colony was left to govern themselves. The assembly elected their governor and councillors, and all other officers. From this period, the history of this colony is, to a greater or less extent, the history of all the colonies.

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## CHAPTER V.

### SETTLEMENT OF NORTH VIRGINIA, OR NEW ENGLAND.

1. The first permanent settlement in New England was commenced in 1620, by a company of men, women, and children from England, called Puritans. They landed on the 22d day of December, at Plymouth. They were destitute of any right to the soil on which they landed. They

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did Richard Cromwell hold this office? When was Charles II. restored to the throne of his father?

12. What action did Charles I. take in reference to Virginia when he ascended the throne? When did he restore the Colonial Assembly? What effect did this have upon the colonists? What action did parliament take? What were the terms of their capitulation?

1. By whom was the first permanent settlement in New England commenced? When? When did they land? Where? Had they any right in the soil? Had they any powers of government? What did they form? By how many was it signed? How did this constitution com-

had no powers of government derived from any earthly authority. They voluntarily entered into a written compact or constitution. It was signed by forty-one persons. It is as follows:

"IN THE NAME OF GOD, AMEN: We whose names are underwritten, the loyal subjects of our dread sovereign lord, King James, having undertaken, for the glory of God, and the advancement of the Christian faith, and honor of our king and country, a voyage to plant the first colony in the northern part of Virginia, do, by these presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute, and frame such just and equal laws and ordinances, acts, constitutions, and offices, from time to time, as shall be thought most meet and convenient for the general good of the colony. Unto which we promise all due submission and obedience."

In pursuance of this constitution, John Carver was, by unanimous consent, chosen their first governor. This colony, early in the following spring, entered into an alliance with Massasoit, an Indian chief, which remained inviolate for more than fifty years. Several other attempts were soon after made to form settlements in other parts of New England.

2. In 1628 a small colony settled at Salem. The following year they were joined by others, increasing their number to about three hundred. About one hundred persons settled at Charlestown. Powers of government were granted to these colonists by Charles I., which constituted

mence? Of whom did they acknowledge themselves the subjects? For what purposes was the voyage undertaken? Into what did they combine themselves? For what purpose? To what did they promise submission and obedience? Who was elected their first governor? What treaty was made by them the following spring? How long did it continue?

2. When did a colony settle at Salem? Where did the next colonists settle? What powers were granted to them by Charles I.? What officers were they authorized to elect? What laws were they authorized to enact? Who arrived the next year? Where did they settle? Where

them a corporation, with power to elect annually a governor, lieutenant-governor, and eighteen assistants. They were authorized to enact such laws for the government of the colony as to them should seem advisable, provided they were not repugnant to the laws of England. The following year many distinguished persons emigrated from England, and settled at Charlestown. The governor and most of his assistants removed to Trimountain, now called Boston. The colonists assembled in Boston to enact laws. The freemen all went, every man for himself. Their government was then a simple Democracy. After the settlements became more extended, they elected a part of their number to act as their trustees or agents. The democracy was thus changed, and became a representative democracy, or a Republic. At their first meeting, a law was passed that none should be admitted freemen, or be entitled to any share in the government, or be capable of being chosen magistrate, or of serving as jurymen, unless they had been, or should thereafter be, received into the Church as members.

3. In 1631 a young Puritan minister, by the name of Roger Williams, arrived in Massachusetts, and became pastor of a church in Salem. He advocated the doctrine that the churches of New England should not acknowledge the hierarchy from which they had separated; that infants should not be subjects for baptism; that magistrates should confine their authority wholly to temporal affairs; and that there should be a general and unlimited toleration of all religions; and for any man to be punished for matters of conscience, was persecution. For propagating these sentiments, he was banished from the colony. He afterwards became the founder of the colony

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did the colonists assemble to enact laws? How did the freemen enact their laws? What was their government? After the settlements became more extended, what course was adopted? What was this form of government? What law was passed at their first meeting?

3. When did Roger Williams arrive in Massachusetts? What doctrines did he advocate? To what was he sentenced for promulgating these doctrines? What colony did he form? Upon what principles?

of Rhode Island. The government of the colony was formed on the principle that, in matters of faith and worship, every citizen should act according to the light of his own conscience, without restraint or interference of any magistrate.

4. In June, 1636, a company of one hundred persons, under the direction of Thomas Hooker, determined to plant themselves upon the Connecticut. They reached their destined location, which they called Hartford. In 1639, the colony adopted a constitution. They ordained that the whole body of freemen should elect a governor, lieutenant-governor, six magistrates, and other officers annually.

5. Among the earliest towns settled in New Hampshire were Portsmouth, Exeter, and Dover. In 1630, the people of Exeter established civil government. These towns were incorporated with Massachusetts. It was afterwards determined that New Hampshire should constitute a separate province, to be ruled by a governor and council, to be appointed by the king, and a house of representatives, to be chosen by the people.

6. In 1609, Captain Henry Hudson, an Englishman by birth, in the employment of the Dutch East India Company, discovered the Hudson River, and the island of Manhattan, on which New York City is built. As he was in the service of the Dutch when he made the discovery, that government claimed the country. They gave it the general name of New Netherlands, and the station on Manhattan Island, New Amsterdam. The English government laid claim to this territory, partly on the ground of its being discovered by an English captain, and

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4. Where was the first settlement in Connecticut? When did the colony adopt a constitution? What did they ordain?

5. What were the earliest towns settled in New Hampshire? When did the people of Exeter establish a civil government? With what State were they at first connected? What was afterwards determined? How were the officers of government appointed?

6. When were the Hudson River and Manhattan Island discovered? By whom? In whose employ? What government claimed the country?

partly on the ground of its having been previously discovered by Englishmen, and was considered as a part of Virginia. The Dutch continued to hold the country until 1664, and in the mean time they carried on a profitable trade with the natives.

7. New York and New Jersey were for several years ruled by the same governor, but each chose a separate assembly. Pennsylvania and Delaware were also governed by the same governor. The colony of Pennsylvania was founded by William Penn. He published the "Frame of Government for Pennsylvania." The object of this frame of government was declared to be, the support of power by the people, and the protection of the people against the abuse of power. It was declared that liberty without obedience was confusion, and obedience without liberty was slavery.

8. In 1632, Charles I. granted to Lord Baltimore the territory of Maryland, and created him the absolute proprietor of it. He was empowered, with the assent of the freemen of the colony, to make laws and administer them, even without their being transmitted to the king for his assent.

9. Between 1640 and 1650 persons suffering from religious persecution in Virginia fled into Carolina. They acknowledged no superior on earth, and obeyed no laws but those of God and nature. Subsequently a charter was granted to the Earl of Clarendon and others, empowering them to enact and publish any laws which they

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Why? What name did they give to it? What name did they give to their station on Manhattan Island? On what two grounds did the English government lay claim to the territory? How long did the Dutch continue to hold the country?

7. How were New York and New Jersey for many years ruled? How were Pennsylvania and Delaware ruled? By whom was Pennsylvania founded? What did William Penn publish? What was declared to be the object of this frame of government?

8. To whom was the territory of Maryland granted? By whom? What was he empowered to do, with the assent of the freemen of the colony?

9. Who first settled in Carolina? What only did they acknowledge and obey? To whom was a charter subsequently granted? What were

should judge necessary, with the assent of the freemen of the colony. They prepared a model government, assisted by the celebrated John Locke. It consisted of one hundred and twenty articles. It was an experiment in political science, which proved in effect useless and impracticable. About the year 1670, the north and south provinces began to be known as North and South Carolina.

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## CHAPTER VI.

### UNITED COLONIES OF NEW ENGLAND.

1. Soon after the commencement of the civil war in England between Charles I. and parliament, a union of the colonies in New England was formed. They assumed the title of "The United Colonies of New England." Two commissioners were appointed from each colony. They met in Boston, in May, 1643, and drew up and signed the "ARTICLES OF CONFEDERATION." By these articles, the colonies entered into a firm and perpetual league of friendship and amity, for offence and defence, mutual advice and succor upon all just occasions, both for preserving and propagating the truth and liberties of the gospel, and for their own mutual safety and welfare.

2. Each colony was to retain its own peculiar jurisdiction and government. No other colony was to be received as a confederate, nor any two united into one ju-

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they empowered to do? What did they prepare? By whose assistance? Of what did it consist? How did this experiment succeed? When did the north and south provinces begin to be known as North and South Carolina?

1. When was a union formed among the New England colonies? What title did they assume? How many commissioners were appointed from each colony? Where did the commissioners meet? When? What did they draw up and sign? Into what league did they enter? For what purpose?

2. What was each colony to retain? Could other colonies be admitted

isdiction, without the consent of the others. The affairs of the colonies were to be managed by two persons from each colony, styled commissioners. The commissioners were to meet annually in the colonies in succession. They were to choose a president when they met. The decision of six commissioners was to be binding on all. They had power to hear and determine all affairs of war and peace—leagues, aids, charges, and number of men for war—and division of the spoils, and whatever is gotten by conquest.

3. The expenses of all just wars were to be borne by each colony in proportion to its number of male inhabitants between the ages of sixteen and sixty. In case any colony was suddenly invaded, on the request of three magistrates of such colony, the other confederates were immediately to send aid to the colony invaded. The commissioners were to take into consideration, afterwards, the cause of such invasion, and if it should appear that the fault was in the colony invaded, such colony was not only to make satisfaction to the invaders, but to bear all the expenses of the war.

4. Fugitives from justice and runaway servants were to be returned to the colonies where they belonged, or from which they had fled. This confederacy, which was declared to be perpetual, continued without any essential alteration for about forty years. It undoubtedly served as a basis of the articles of confederation adopted by the thirteen colonies.

5. Soon after Charles II. was restored (1660), he com-

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as confederates? How often were the commissioners to meet? What officer were they authorized to choose? How many commissioners had the power to bind all? What powers were assigned to the commissioners?

3. How were the expenses of all just wars to be borne? If any colony was suddenly invaded, what was to be done? What were the commissioners afterwards to consider? If the fault was in the colony invaded, what was to be done?

4. What was the provision as to fugitives from justice and runaway servants? How long did this confederacy continue? Of what did it form the basis?



manded the governor and council to send persons to England to answer certain complaints made against Massachusetts. The governor called the general court together, and they agreed to acknowledge Charles as their sovereign lord and king. An address was forwarded to him to that effect. The king returned a letter to the colony, confirming, and offering to renew, their charter,—tendering pardon to all his subjects for all offences, except such as stood attainted, but requiring the following conditions: 1. That all laws made in the late troubles, derogatory to the royal authority and government, should be repealed; 2. That the rules of the charter for administering the oath of allegiance should be observed; 3. That the administration of justice should be in the king's name; 4. That liberty of conscience in the use of the common prayer should be observed; 5. That there should be impartiality in the election of the governor and magistrates, without regard to any faction in respect to their opinions or profession; 6. That all freeholders of competent estates, orthodox in their religion, not vicious in their lives, though of different persuasions concerning church government, should be admitted to vote.

6. The general court, in replying to his majesty's letter, stated that for the repealing of all laws here established since the late changes, derogatory to his majesty's authority and government, they had considered thereof, and were not conscious of any to that tendency; that concerning the oath of allegiance, they were ready to attend to it as formerly, according to charter; that concerning liberty to use the common prayer, none among them had appeared to desire it.

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5. What demand did Charles II. make upon the governor and council of Massachusetts? What action did they take? What answer did the king return? To what citizens did he tender pardon? What laws were to be repealed? What special rules of the charter were to be observed? In whose name was justice to be administered? What liberty of conscience was to be observed? What was the rule as to elections? Who were to be admitted to vote?

6. What was the reply in reference to repealing laws? In refer-

7. In 1675, and during the reign of Charles II., occurred the famous Indian war known as King Philip's War. A confederacy was formed among the Indians capable of sending into action more than three thousand warriors. The war on the part of the colonists was conducted by the commissioners of the United Colonies of New England. In this contest New England lost six hundred of her colonists, and a great amount of property. More than six hundred houses were laid in ashes, and a heavy debt was also incurred. The colonists acted perfectly independent of the government of England. They did not receive the slightest assistance from that government, neither did they ask it. They fought their own battles, and spent their own treasure in the defence of their homes, families, and firesides.

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## CHAPTER VII.

### POSSESSION OF NEW NETHERLANDS TAKEN BY THE ENGLISH.

1. AFTER Charles II. ascended the throne of England he granted a charter to the Duke of York, conveying to him the country held by the Dutch, called by them the New Netherlands. An armament, under the command of Colonel Nichols, was dispatched to conquer the territory. He was appointed deputy-governor of the territory he was about to conquer. Peter Stuyvesant was then the

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ence to the oath of allegiance? In reference to the use of the common prayer?

7. During whose reign did King Philip's War occur? How many warriors was the Indian confederacy capable of sending into the field? By whom conducted on the part of the colonists? How many did the colonists lose? How many houses were destroyed? Did the colonists receive any assistance from England? Did they ask any?

1. To whom did Charles II. grant a charter of New Netherlands? Who was appointed deputy-governor? Who was the Dutch governor

governor of the Dutch colony. Nichols soon arrived at the mouth of the Hudson, and took a position before the capital of New Netherlands. Governor Stuyvesant resolved to make a gallant resistance; but the colonists, apprehending that any resistance to the disciplined forces and powerful artillery of the invaders would be utterly hopeless, were anxious to spare the effusion of blood and the destruction of their property. As the governor was unsupported by his countrymen, he was compelled to agree to a treaty of capitulation.

2. The first article in the treaty declared that the inhabitants should freely enjoy all their farms and houses, except such as were in forts; that the West India Company should have liberty to transmit all their arms and ammunition out of the country at any time within six months, or that they should be paid for the same; that all the people should continue denizens, and enjoy their lands, houses, and goods, or dispose of them as they pleased; that any people might come from the Netherlands and settle in the colony; that any Dutch vessel might freely come hither, and that any of the Dutch might freely return home, or send any sort of merchandise home in vessels of their country.

3. Soon after its subjugation, New Amsterdam received the name of New York; and the name was extended to the whole province. Colonel Nichols immediately assumed the command of the territory as deputy-governor for the Duke of York. The governor, council, and justices of the peace were invested with every power of the colony—legislative, executive, and judicial. Trial by jury was introduced as a check upon judicial proceedings. The

of the colony? What did he resolve to do? Was he sustained by the colonists? What was the governor compelled to do?

2. What were the inhabitants to enjoy by the first article in the treaty? What were the West India Company allowed to do with their arms and ammunition? Who were allowed to come and settle in the colony? What privileges were extended to vessels and merchandise?

3. What name was given to New Netherlands soon after its subjugation? In whom were the powers of government vested? For what purpose was trial by jury introduced? In forming a code of laws, what was

court collected into one code the ancient customs, regarding the laws of England as supreme, and transmitted their ordinances to England; which were confirmed by the Duke of York. About the same time the inhabitants of New York City were incorporated under a mayor, five aldermen, and a sheriff.

4. In 1682, the inhabitants of New York first participated in legislation. The council and the corporation of New York having concurred in soliciting their royal patentee to permit the people to possess some share in the government, the deputy-governor was informed that the same form of government would be established as the other colonies enjoyed, particularly in choosing an assembly; and the deputy-governor was accordingly instructed to call together an assembly of the province. Orders were issued for the election of eighteen members of assembly. A session was held, and several important laws were passed.

5. At the death of Charles II., in 1685, the Duke of York, to whom the charter of New York was granted, became king of England, with the title of James II. On assuming the throne, he expressed his contempt for the authority of parliament, and his determination to exercise an unlimited despotism. His short and inglorious reign was wholly employed in attempting to set aside the Protestant religion, and to establish the Roman Catholic faith. The notorious Jeffreys, the most unscrupulous and profligate judge in English history, was chief-justice, and afterwards appointed lord chancellor. He gloried in his barbarity, and boasted that he had hanged more men

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regarded as supreme? Under what officers was New York City incorporated?

4. When did the inhabitants of New York first participate in legislation? What petition was sent to the patentee? What was the reply? What was the deputy-governor instructed to do? Of how many members did the assembly consist?

5. When did the Duke of York become king of England? Under what title? On assuming the throne, what did he express? In what was his short and inglorious reign employed? Who was then chief-justice in England? What was his character? Of what did he boast?

than any other judge since the days of William the Conqueror.

6. The efforts of James in favor of the Catholic religion were, for a time, attended with success. But having committed seven bishops to the Tower for having refused to read a declaration to suspend the laws against popery, a spirit of general indignation was aroused. William, prince of Orange, was invited to assume the government. The principal nobility and officers joined his standard; and James, finding himself deserted by the people, and even by his own children, escaped to France. Parliament declared the king's flight an abdication, and settled the crown upon William III. and Mary.

7. Ireland still adhered to James, and the parliament of Ireland declared William a usurper. Assisted by France, James landed with some French forces, where he was joined by a large army; but he was defeated by William at the River Boyne, and Ireland submitted to the new king. During the reign of James he had instituted a suit in the Court of Chancery against Massachusetts, and obtained a decree that their charter should be forfeited. The king then appointed a governor, who declared that the old charter being forfeited, the title of the colonists to their lands was of no validity. He then compelled the colonists to procure new deeds, for which large sums were demanded.

8. The surrender of the charter of Connecticut was demanded and refused. It had been concealed in a large

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6. What was the first effect of the efforts of King James in favor of the Catholic religion? For what did he send seven bishops to the Tower? What effect did this have upon the nation? Who was invited to assume the government? Who joined his standard? What did James then do? What action did parliament then take?

7. What part of the country adhered to James? What did their local parliament declare? By what government was James assisted? What action did he take? By whom was he defeated? Where? For what purpose did James, during his reign, institute a suit against Massachusetts? What did the governor appointed by the king declare? What did he compel the colonists to procure?

8. What other charters were demanded? How was the proclamation

oak-tree, called the "Charter Oak." For more than two years there was a general suspension of the charters of the colonies. The proclamation of the accession of William and Mary to the throne was celebrated in Massachusetts with great ceremony. In the war between James, assisted by France, and William, in command of the English forces, the colonies were deeply involved. The French colonies, in alliance with the Indians, commenced the work of destruction. It continued for about seven years, during which time the colonists suffered severe losses. After a few years of peace, war broke out again in Europe, and hostilities speedily commenced in the colonies, which continued for a period of eleven years.

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## CHAPTER VIII.

### WAR BETWEEN THE FRENCH AND ENGLISH COLONIES.

1. In the preceding chapters we have taken a rapid review of many important events connected with the establishment and early history of the English colonies in North America. Intimately connected with the history of the English colonies, is the early history of the French colonies in America. Champlain is regarded as the founder of Canada, or New France. He built and fortified Quebec. He explored the vast wilderness by which it was surrounded. The French continued their discoveries to the Mississippi, and in the year 1717 founded the city of New Orleans. They conceived the idea of uniting

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of the accession of William and Mary to the throne received in Massachusetts? Did the war between the French, on the part of James, and the English, on the part of William, extend to America? With whom did the French colonies form an alliance? How long did this war in the colonies continue? What occurred after a few years of peace? How long did it continue?

1. Of what have we taken a rapid review in the preceding chapters? What is intimately connected with this history? Who was the founder

their northern and southern possessions by a chain of forts, along the banks of the Ohio and Mississippi rivers. They soon erected many strong fortifications. Many of the grants from the English crown extended from the Atlantic to the Pacific. The plans of the French interfered with these grants, and they determined to resist. A messenger was sent from Virginia to the commanding officer on the Ohio, to demand, in the name of the king of England, that the French desist from the prosecution of a design which was considered a violation of the treaties subsisting between England and France. In reply, the commanding officer stated that he had taken possession of the country by direction of the governor-general of Canada, and to his orders he should yield implicit obedience.

2. This reply was not satisfactory to Virginia, and they determined to repel the invasion. The proceedings of the French excited great interest in England, and war was deemed inevitable. Orders were sent to the governors of the several colonies to repel force by force, and to dislodge the French from their posts on the Ohio. These orders were accompanied by a recommendation to form a union of the colonies, for a more effective defence. Delegates were appointed to meet at Albany for the purpose of conferring with the Five Nations, and the subject of union was also discussed at the convention. A committee was appointed to devise some scheme for the proposed confederation. A plan was drawn up by Benjamin Franklin, and adopted on the 4th of July, 1754. It recommended a government similar in form to the government of the

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of New France? What city did he build? In what direction did the French continue their discoveries? How far? What idea did they conceive? What did they erect? How far did many of the grants from England extend? With what did the plans of the French interfere? What did the English colonists determine to do? What was sent from Virginia? To whom? What was the reply to this demand?

2. Was this reply satisfactory? What effect did the proceedings of the French have in England? What orders were sent to the governors of the several colonies? With what were their orders accompanied? When were delegates to meet? For what purpose? What subject did they discuss? For what purpose was a committee appointed? By whom was

separate colonies. There was to be a general council, to be composed of deputies from the several colonies, and a president appointed by the crown, with power to veto all acts of the council.

3. Some of the delegates dissented, on the ground that too much power was placed in the hands of the crown. It was opposed and rejected by the British government, because it put too much power in the hands of the colonists. They then recommended that the governors of the several colonies, with one or two of their councillors, should meet and adopt such measures as the common safety might demand. It was proposed that all necessary funds be drawn from the British treasury, and that parliament impose a general tax upon the colonies to repay the same. This proposition was strongly opposed. It was found that any attempt to tax the colonies by parliament, where they were not represented, would create unusual discontent, and the scheme was defeated.

4. The war which soon after commenced was carried on vigorously for about nine years, and was finally terminated by a treaty of peace, signed in 1763, by which the French surrendered to the English their only valuable territory in America. The English colonies founded in America were in almost all cases the result of private enterprise, and no American colony was established at the expense of the government of Great Britain. The soil was claimed as an appendage to the crown, and the early colonists acknowledged some connection with the parent State. Some of the colonies were almost entirely independent. They

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a plan drawn up? When was it adopted? What did it recommend? Of what was the council to be composed? By whom was the president to be appointed? With what powers?

3. Upon what ground did some of the delegates dissent? Upon what ground was it opposed and rejected by the British government? What did they then recommend? From what source was it proposed to draw the necessary funds? What was parliament then to do? What was found to be the effect of an attempt to tax the colonies by parliament?

4. For what time was the war between the French and English colonies carried on? How terminated? How were the English colonies in America founded? Was any American colony established at the expense of the English government? How was the soil claimed by England?



elected their assembly, their council, their governor, and by royal charter were authorized to make, apply, and execute their laws. The colonists were left to themselves in their earliest and most important struggles for existence. They had voluntarily separated themselves from their native land by an ocean of three thousand miles in extent. The excessive heat of summer, the intense cold of winter, and the tomahawk of the savage, rapidly thinned their ranks. When plots were formed by their savage foes for their entire extermination, they trod undismayed their war-path alone. Not a soldier was furnished by the parent country, and not a dollar was contributed towards the expenses of protection.

5. But the liberty of the colonists became more dear to them, when they remembered the sacrifices they had made to establish and protect it. Continued encroachments were made on chartered rights. Charters were demanded, and in some instances surrendered. In other instances they were annulled by a court of chancery. Officers of the highest rank, formerly elected by the people, were afterwards appointed by the crown. Many attempts were made to render these officers independent of the colonial legislature. But the colonists resisted these encroachments, and confined the power of the crown to the narrowest possible limits. Each colony continued to have its legislative assembly, and these assemblies had repeatedly declared that no power could lawfully impose any tax without the consent of the colonial assembly.

6. The British parliament asserted its right to tax the colonies, and insisted on the vigorous execution of the

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What were some of the colonies authorized to do? In what were the colonists left to themselves? By what had they separated themselves from their native land? What causes had rapidly thinned their ranks? When plots were formed for their extermination, what did they do? Was any aid furnished by the mother country?

5. What rendered the liberties of the colonists more dear to them? What encroachments were made? What change was made in the selection of officers? Independent of what, were attempts made to render these officers? What action did the colonists take? What did each colony continue to have? What did these assemblies repeatedly declare?

**Navigation Act.** In 1764 an act was passed which declared that the bills which had been issued by the colonial government should no longer be regarded as legal currency. About the same time, the House of Commons passed eighteen acts for imposing duties on the colonies. The Stamp Act was deferred to the next session; but the others were immediately enforced. The colonists were greatly excited by the determination of the British parliament to carry these acts into immediate effect. Every day the affection of the colonists for the mother country was evidently diminishing, and the determination to resist force by force was more and more cherished. Combinations were formed to resist these acts. They were viewed as violations of the British constitution, and as destructive of the first principles of liberty. The House of Burgesses of Virginia passed spirited resolutions, denying the right of parliament to tax the colonies. The Assembly of Massachusetts recommended a meeting of delegates from each of the colonies to propose an address to his majesty and parliament, imploring relief.

7. On the 7th of October, 1765, twenty-eight delegates assembled in the city of New York. Nine colonies were represented. This congress declared that the colonists were entitled to all the rights and liberties of natural-born subjects within the kingdom of Great Britain: that the most essential of these were the exclusive power to tax themselves, and the privilege of trial by jury. A petition to the king, and a memorial to each house of parliament, were also agreed upon. The most intense excitement began to appear in all the colonies, which occasionally broke

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6. What right did the British parliament assert? Upon what did they insist? What act was passed in reference to the bills issued by the colonial governments? For what purpose were other bills passed about the same time? How many were passed? Was the Stamp Act carried into immediate effect? What effect was produced upon the colonists? For what purpose were combinations formed? In what light were these acts of parliament viewed? What resolutions were passed by the House of Burgesses in Virginia? What did the Assembly of Massachusetts recommend?

7. When and where did the delegates meet? How many colonies were

out into acts of violence. The petition of the colonies was not allowed to be read in parliament. The Stamp Act was, however, repealed.

8. In 1767 another act was passed for taxing America, by imposing duties on tea, glass, paper, and other articles. Another act was passed, appointing the officers of the navy as customhouse officers. Another act was passed, restraining the legislature from passing any act whatever, until they had furnished the king's troops with all the articles required by law. These three acts created great alarm among the colonists. If parliament assumed the right to abolish the legislative power of the colonies, some other right guarantied to them by their charters might be attacked, and they might even abolish the charters.

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## CHAPTER IX.

### CONTINENTAL CONGRESS.

1. THE Continental Congress met at Philadelphia, on the 5th of September, 1774. All the colonies were represented, except Georgia. A series of resolutions, defining the rights of the colonies, and the instances in which they had been violated, were passed. Among the resolutions were the following :

“Resolved unanimously, That the inhabitants of the English colonies in North America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following rights: 1. They are entitled to life, liberty, and property ;

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represented? What did they declare? What was agreed upon? Was this petition allowed to be read in parliament?

8. What three acts were passed in 1767, in reference to the colonies? What was the effect of the passage of these three acts?

1. Where did the Continental Congress meet? When? What colonies were represented? What did they define in their resolutions? By

and they have never ceded to any foreign power whatever, a right to dispose of either without their consent; 2. That our ancestors, who first settled these colonies, were, at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects within the realms of England; 3. That by such emigration they by no means forfeited, surrendered, or lost any of these rights; but that they were, and their descendants now are, entitled to the exercise and enjoyment of all or such of them as their local circumstances enable them to exercise and enjoy; 4. That the foundation of English liberty and of all free governments, is a right in the people to participate in their legislative councils; and as the English colonists are not represented, and, from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal policy, subject only to the negative of their sovereign, in such a manner as has been heretofore used and accustomed. But from the necessity of the case, and a regard to the natural interests of both countries, we cheerfully consent to the operation of such acts of the British parliament as are *bona fide* restrictive to the regulation of our external commerce for the advantage of the whole empire, and the commercial benefit of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America without their con-

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what title did the colonists possess the rights enumerated? What is the first right defined by their resolutions? To what were their ancestors, who first settled the colonies, entitled at the time of their emigration? What effect did their emigration have upon these rights? What did they declare to be the foundation of English liberty and of all free governments? Were the colonies represented in the British parliament? In what cases did they declare that they were entitled to a free and exclusive power of legislation? Subject only to what? To what acts of the British parliament did they cheerfully consent? To what law were the respective colonies entitled? To what especial privilege? To the

sent ; 5. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by the peers of their vicinity, according to the course of that law ; 6. That they are entitled to the benefit of such of the English statutes as existed at the time of their colonization, and which they have, by experience, respectively found to be applicable to their local and other circumstances ; 7. That his majesty's colonies are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charter, or secured by their several codes of provincial laws. 8. That they have a right peaceably to assemble to consider their grievances and petition the king ; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal. 9. That the keeping a standing army in these colonies in the time of peace, without the consent of the legislature of that colony in which such army is kept, is against law. 10. That it is indispensably necessary to good government, and rendered essential by the English constitution, that the constituent branches of the legislature be independent of each other ; that the exercise of legislative power in the colonies by a council appointed during the pleasure of the crown is unconstitutional ; dangerous, and destructive to the freedom of American legislation. All of which, the aforesaid deputies, in behalf of themselves and constituents, do claim, demand, and insist on as their indubitable rights and liberties, which cannot be legally taken from them, altered, or abridged by any power whatever, without their consent, by their representatives in their several provincial legislatures."

2. An address to the king and to the people of Great

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benefit of what statutes were they entitled ? To what further immunities and privileges were they entitled ? What right of assembling to discuss their grievances, and of petitioning the king, did they claim ? What did they declare to be illegal ? What did they declare in reference to keeping a standing army in the colonies ? What did they declare to be indispensable to good government ? What did they declare to be unconstitutional ? In whose behalf did they claim these rights ?

Britain was prepared, and a memorial to the inhabitants of British America. In their address to the people of Great Britain, they say: "You have been told that we are seditious, impatient of government, and desirous of independence. Be assured that these are not facts, but calumnies. Permit us to be as free as yourselves, and we will ever esteem a union with you to be our greatest glory and our greatest happiness. We shall ever be ready to contribute all in our power to the welfare of the whole empire. We shall consider your enemies as our enemies, and your interest as our interest. But if you are determined that your ministers shall wantonly sport with the rights of mankind; if neither the voice of justice, the dictates of the law, the principles of the constitution, nor the suggestions of humanity, can restrain your hands from shedding human blood in such an impious cause, we must then tell you that we will never submit to be hewers of wood and drawers of water for any ministry or nation in the world."

3. In their address to the king, they say: "Permit us then, most gracious sovereign, in the name of all your faithful people in America, with the utmost humility, to implore you, for the honor of Almighty God, whose pure religion our enemies are undermining; for your glory, which can be advanced only by rendering your subjects happy, and keeping them united; for the interests of your family, depending upon an adherence to the principles that enthroned it; for the safety and welfare of your kingdom and dominion, threatened with almost unavoidable dangers and distress, that your majesty, as the loving father of your whole people, connected by the same bonds

2. What did the Continental Congress prepare? In their address to the people of Great Britain, what do they say that the people have been told? Were these facts? If the people of the colonies were allowed to be as free as the people of Great Britain, how would the colonists esteem a union with them? To what would they be ever ready to contribute? How would the colonists consider the enemies of the people of Great Britain? If they could not be restrained from shedding human blood in such an impious cause, what did the colonists tell them?

3. By what title did they address the king? In whose name? For

of law, loyalty, faith, and blood, though dwelling in various countries, will not suffer the transcendent relation formed by these ties to be further violated in uncertain expectation of effects which, if obtained, can never compensate for the calamities through which they must be gained."

4. The administration declared their determination never to relax in their measures of coercion until America was forced into obedience. On the 18th of April, 1775, the first blood of the Revolution was shed at Lexington, Massachusetts. On the 17th of June following, the battle of Bunker Hill was fought. An act was passed prohibiting all trade and commerce with the colonies, authorizing the capture and condemnation of all American vessels, with their cargoes, and all other vessels found trading in any port in the colonies. The vessels and property were vested in the captors, and the masters, crews, and other persons found on board any captured vessel, were to be put on board any English armed vessel, and were to be considered in the service of his majesty, to all intents and purposes as though they had entered voluntarily into his majesty's service; thus compelling the Americans to be the executioners of their nearest relatives and dearest friends.

5. As soon as the news of the passage of this act reached America, the Continental Congress directed reprisals to be made, both by public and private armed vessels, against the ships and goods of the inhabitants of England found on the high seas. They also opened their ports to all the world, except Great Britain. In this state of affairs, it

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what four reasons did they implore his majesty, as the loving father of his whole people, not to suffer these relations to be further violated?

4. What did the administration declare? When was the first blood of the Revolution shed? Where? When was the second battle fought? What act was passed by parliament? What did this act authorize? In whom were the vessels and property vested? What was to be done with the masters, crews, and other persons found on board? How were they to be considered? What did this compel the Americans to become?

5. As soon as the passage of this act became known to the Continental Congress, what did they direct? To whom did they open their ports? What seemed preposterous to the colonists in this state of affairs?

was preposterous for the colonists to consider themselves as exercising any powers of government under any authority of England.

6. On the 7th of June, 1776, a resolution was offered in the Continental Congress, "That the United Colonies are, and ought to be, free and independent States; that they are absolved from all allegiance to the British crown; and that all political connection between them and Great Britain is, and ought to be, totally dissolved." The next day it was debated in committee of the whole, and soon after adopted by a large majority. A committee was appointed to prepare a declaration of independence, which was made public on the 4th of July, 1776, a little more than thirteen months after the first battle was fought.

7. In the Declaration of Independence the causes which impelled the colonies to dissolve the political bonds which connected them with the government of England, are set forth. The king of Great Britain (George III.) is charged with committing repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over the colonies. Twenty-seven specific charges are made against the king. In commenting upon these charges, they say: "In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people."

8. They then declare, in the name and by the authority of the people, that the United Colonies are, and ought to

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6. What action was taken in the Continental Congress on the 7th of June, 1776? When was this resolution taken up and debated? For what purpose was a committee appointed? When was this declaration made public? How long after the first battle was fought?

7. What is set forth in the Declaration of Independence? Who was then king of Great Britain? With what is he charged? How many specific charges are made? In every stage of these oppressions, what action did the colonists take? How were their petitions answered? How is the character of the prince marked? For what is he unfit?

8. What does Congress then declare, in the name and by the authority



be, free and independent States; that they are absolved from all allegiance to the British crown; that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. For the support of this declaration they mutually pledged to each other their lives, their fortunes, and their sacred honor.

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## CHAPTER X.

### ARTICLES OF CONFEDERATION.

1. ON Friday, the 7th day of June, 1776, the question of separation from the mother country was brought before the Continental Congress. The next day it was debated in secret session, and agreed to. On Monday following a committee was appointed to prepare articles of confederation. The committee reported twenty articles, only thirteen of which were finally adopted. These were adopted on the 15th of November, 1777, by Congress, and sent to the several States for ratification. They were finally ratified by Congress, in 1778. They continued in force until the adoption of the present constitution, on the 4th day of March, 1789.

2. By the Articles of Confederation, the style of the confederacy was to be "THE UNITED STATES OF AMERICA."

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of the people? From what are they absolved? As free and independent States, what powers were they declared to possess? What did they pledge in support of the declaration?

1. When was the question of separation from the mother country brought before Congress? When was the committee to prepare articles of confederation appointed? How many articles were reported? How many adopted? How long did they continue in force?

2. What was to be the style of the confederacy? What was each

Each State was to retain its sovereignty, freedom, and independence, and every power, jurisdiction, and right which was not by the confederation expressly delegated to the United States in Congress assembled. By the Articles of Confederation the States entered into a **FIRM LEAGUE OF FRIENDSHIP** with each other for their common defence, the security of their liberties, and their mutual and general welfare. They bound themselves to assist each other against all attacks made upon them for any pretence whatever. The inhabitants of each of the States (paupers, vagabonds, and fugitives from justice excepted) were to be entitled to all privileges and immunities of free citizens in the several States. The people of each State were to have free ingress and egress to and from any other State. They were to enjoy therein all the privileges of trade and commerce, and be subject to the same restrictions and duties as the inhabitants. No State could subject the property of the other States or of the United States to any restrictions or duties. If any person charged with treason, murder, or other high misdemeanor in one State should flee to another State, he was to be delivered up on demand of the governor of the State from which he fled, and removed to the State having jurisdiction of the offence.

3. Full faith and credit was to be given in each State to the records, acts, and judicial proceedings in every other State. Delegates to Congress were to be annually appointed by the legislatures of each State. Each State reserved to itself the power to recall its delegates, and send others in their stead for the remainder of the year. No State was to have less than two, nor more than seven delegates. No person was to be a delegate for more than

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State to retain? Into what did the States enter by the Articles of Confederation? For what purpose? To what did they bind themselves? To what were the inhabitants of each State entitled? What were they to enjoy in other States? To what were they subject? What property was exempt from duty? What was the agreement as to delivering fugitives from justice?

3. To what was full faith and credit to be given in each State? By whom were delegates to Congress to be appointed? For what time?

three years, in any term of six years. Delegates were not competent to hold any office under the United States, for which they would receive any salary or fees. Each State was to maintain its own delegates. Each State was to have one vote only in Congress. Members could not be impeached or questioned in any court or place out of Congress, for any speech or debate in Congress. They were privileged from arrest in going to, attending on, and returning from Congress, except for treason, felony, or breach of the peace.

4. No State was to send or receive any ambassador, or enter into any conference or alliance with any king, prince, or State. No person holding any office of trust or profit under the United States or any State could accept any present, office, emolument, or title from any king, prince, or foreign State. The United States and each State were prohibited from granting any title of nobility. No two States could enter into any treaty between themselves, without the consent of Congress. No State could lay any duties which would interfere with any of the treaties entered into by the United States. No State was to keep any vessels of war in time of peace, without consent of Congress. Every State was to keep up a well-regulated and disciplined militia, fully armed and equipped. No State was to engage in war without the consent of the United States, unless actually invaded, or the danger so imminent as not to admit of delay. No State was to grant letters of marque or reprisal, unless such State is infested with pirates.

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What power in reference to its delegates did each State reserve to itself? What was to be the number of delegates? For what time appointed? For what time eligible? To what offices were they ineligible? How supported? How many votes was each State to have in Congress? To what privilege of speech were they entitled? When privileged from arrest?

4. Could a State send or receive ambassadors? Could a State enter into an alliance with any king, prince, or foreign State? Who were prohibited from accepting any present, office, emolument, or title from any king, prince, or foreign State? What governments were prohibited from granting titles of nobility? Could two States form a treaty between

5. When any land forces were raised by any State for the common defence, all officers under the rank of colonel were to be appointed by the legislature of the State. All vacancies were to be filled in the same manner. All expenses incurred in war for the common defence or general welfare were to be defrayed out of the common treasury. The common treasury was to be supplied by the several States in proportion to the value of the real estate in each. The taxes were to be assessed and collected by the several States.

6. The United States were to have the sole and exclusive right of determining on peace and war; sending and receiving ambassadors; entering into treaties and alliances; deciding what captures are legal; granting letters of marque and reprisal; appointing courts for the trial of piracies and felonies committed on the high seas; determining all controversies between two or more States. When one State had a controversy with another State, the State was to present a petition to Congress, stating the matter in question, and praying for a hearing. Notice, by the order of Congress, was to be given to the other State in controversy. A day was assigned for the appearance of the parties. Judges were to be appointed, by mutual consent, to hear and determine the matter in question. If the parties could not agree in selecting judges, Congress was to name three persons from each State; and each party, beginning with the petitioner, was alternately to strike out one name, until the number should be reduced

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themselves? What was the rule adopted as to duties on commerce? As to keeping vessels of war in times of peace? What was every State to keep up? Could one State engage in war without the consent of the United States? Could a State grant letters of marque or reprisal?

5. When any land forces were raised by any State, by whom were the regimental officers appointed? How were vacancies filled? How were the expenses of a war for the common defence to be paid? How was the common treasury to be supplied? By whom were the taxes to be assessed and collected?

6. What sole and exclusive rights were the United States to have? When one State had a controversy with another State, how was the process of settlement commenced and conducted? How were the judges to

to thirteen. From that number, not less than seven, nor more than nine, were to be drawn out by lot. The persons whose names were so selected, or any five of them, were to be judges to hear and determine the controversy. Each commissioner was required to take an oath "well and truly to hear and determine the matter in question according to the best of his judgment, without favor, affection, or hope of reward."

7. The United States were to have the sole and exclusive right to regulate the alloy and value of coin struck by their authority, or by the authority of the several States. They were to fix the standard of weights and measures, and regulate the trade and manage all affairs with the Indians, not members of any of the States. They were to establish and regulate post-offices, and postage on letters passing through the same. They were to appoint all officers of the land forces in the service of the United States, except regimental officers. They were to appoint all officers of the naval forces, and commission all officers in the service of the United States. They were to make rules for the government and regulation of the land and naval forces, and direct their operations.

8. Congress had power to appoint a committee to sit in the recess of Congress. They had power to appoint one of their number president for one year. Such president was ineligible for the next two years. They had power to ascertain the sum of money necessary to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses. They had power to borrow money or emit bills on the credit of

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be appointed? If the parties could not agree? How many were to be drawn? What oath were the commissioners required to take?

7. Which government was to regulate the alloy and value of coin? To fix the standard of weights and measures? To regulate trade with the Indians? To establish post-offices? What officers were the United States to appoint? What government made the rules for the regulation of the land and naval forces?

8. For what purpose did Congress appoint a committee? By whom was their president elected? For what time? For what time thereafter was he ineligible? What sums of money did Congress have power to

the United States. They had power to build and equip a navy. They had power to agree upon the number of land forces, and to make requisitions upon each State for its quota. Every State was to abide by the determination of the United States, in Congress assembled, on all questions which, by the Articles of Confederation, were submitted to them. *The Articles of Confederation were to be invariably observed by every State, and THE UNION WAS TO BE PERPETUAL.*

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## CHAPTER XI.

### FORMATION OF CONSTITUTIONS.

1. WHILE the American army were contending for liberty on the battle-field, occasionally bearing away a trophy of victory, and Congress was preparing for the permanent establishment of our national government, the several States were founding and establishing their State governments. In the colonial governments, which existed previous to the declaration of independence, the chief executive officer was the governor appointed by the government of England. When the colonies became independent States, they retained the office of governor, but changed the mode of appointment. By the several State constitutions, the choice of governor was transferred to the people, to be determined by the ballots of the qual-

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ascertain, appropriate, and apply? By what government was the navy to be built and equipped? What government determined the number of land forces to be raised? On what questions were the States to abide by the determination of the United States in Congress assembled? What was to be inviolably observed by every State? How long was this union of States to remain?

1. While the American army were contending for liberty on the battle-field, what action was Congress and the legislatures of the States taking? Who was the chief executive officer in the colonial governments? How appointed? What did the colonies retain when they became States? What did they change? How chosen under the State constitutions? Un-

ified electors. In the colonial government, the legislative power was vested in one body of men, known as the House of Representatives. In the State governments, the legislative power was vested in two bodies of men, known as the Senate and House of Representatives. In the government of England, the legislative power was vested in a House of Lords and a House of Commons. Our territorial governments very much resemble the old colonial governments. Each territory has a governor, appointed by the President of the United States. The legislative power is vested in one body, known as the House of Representatives.

2. The national government, under the Articles of Confederation, consisted of one body of men, appointed by the legislatures of the several States for one year, and that body selected one of their number as president. This plan of government was found to be impracticable, and in 1789 the Articles of Confederation were abandoned, and the constitution of the United States adopted. By the national constitution, the choice of president was transferred from Congress and vested in the qualified electors of the nation. The legislative power was vested in two branches, known as the Senate and House of Representatives. Representatives were chosen by the direct vote of the electors in each congressional district. Senators were chosen by the joint ballot of the State Senate and House of Representatives. We shall now proceed to examine the State and national constitutions; and as they are all formed

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der the colonial governments, where was the legislative power? Under the State governments? In the government of England, where vested? What do our territorial governments resemble? Who is the chief executive officer in the territories? How appointed? Where is the legislative power vested?

2. Of what did the national government, under the Articles of Confederation consist? How appointed? For what time? What executive officer did they select? How did this form of government succeed? When was it abandoned? What was substituted? To whom was the choice of president transferred? Where was the legislative power vested? How were the representatives chosen? How were the senators chosen? Is there any resemblance in the several constitutions?

upon the same plan, and after the same model, we can examine them together, instead of taking them separately.

3. The government of the United States is really but one government, although it exercises its powers through the State governments and the national government. In the State governments each State acts by itself in all matters which belong to that State alone, and it possesses sovereignty and jurisdiction over all its private affairs. In the national government, all the States act together in all matters which belong equally to all the States. As each planet in our solar system has its own independent rotary motion on its axis, by which the length of its days and nights is determined, yet all revolve in harmony, governed by one law, around the centre of the solar system; so each State has its separate sovereignty and jurisdiction, while all move in harmony around one common centre. The State governments are republics, and the national government is a republic. The States have adopted constitutions, which are the supreme law of the several States. The nation has adopted a constitution, which is the supreme law of the nation. The State constitutions differ in a few minor points, but all are formed after the same model. The national constitution is also formed after the same model. These constitutions, both State and national, commence with a preamble. A preamble is an introduction, which generally refers to some circumstance which has previously occurred.

4. In the preambles of the national and State constitutions, some of the particular circumstances under which

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3. Is the government one or many? How does each State act? Over what does it possess sovereignty and jurisdiction? In what matters do the States act together? What motion is peculiar to each planet in the solar system? What motion is common to all? What is the form of the State government? What is the form of the national government? What is the supreme law in the nation? What is the supreme law in the State? With what do the constitutions commence? What is a preamble?

4. What is set forth in the preambles of the national and State consti-



the constitution was formed are set forth. The government which had been formed under the Articles of Confederation did not secure perfect union, insure domestic tranquillity, fully provide for the common defence and promote the general welfare. This preamble is as follows: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

5. In the preambles of most of the constitutions of the thirteen States, which were formerly colonies of Great Britain, the causes which impelled the colony to throw off that government, and assume a new government, are set forth. In the preamble of the constitution of Virginia, it was declared that George III. had endeavored to pervert the government into a detestable and insupportable tyranny. Twenty-two specific charges are then made. It was further declared, that by these several acts of misrule, the government of this country, as before exercised under the crown of Great Britain, was totally dissolved. That having maturely considered the premises, and in compliance with the recommendation of Congress, they ordained and established a new government.

6. When a State is formed from a territory, that fact is generally set forth in the preamble. The preamble of the constitution of Alabama began as follows: "We, the people of Alabama Territory, having the right of admission into the general government as a member of the

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tutions? For what purpose was the Constitution of the United States established, as set forth in the preamble?

5. What is set forth in the preambles of the States which were formerly colonies of Great Britain? In the preamble to the constitution of Virginia, what charge was made against George III.? What effect did these acts of misrule have upon the government, as formerly exercised under the crown of Great Britain? In compliance with what recommendation did they ordain and establish their constitution?

6. When a State is formed from a territory, what is set forth in the

Union, consistent with the Constitution of the United States, by our representatives assembled in convention at the town of Huntsville, on Monday, the 5th day of July, 1819, in pursuance of an act of Congress, entitled, 'An Act to enable the People of Alabama to form a Constitution and State Government, and for the Admission of such State into the Union on an equal footing with the original States,' do ordain and establish the following Constitution."

7. In the preamble to the constitution of Massachusetts, it was affirmed that the end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and blessings of life. And whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness. The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenant with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in forming a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them, that every man may at all times find his security in them. We, therefore, the people of Massachusetts, acknowledging with grateful hearts the goodness of the great Legislator of the Universe in affording us, in the course of His providence, an opportunity,

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preamble? How is that fact set forth in the preamble to the constitution of Alabama? Upon what did they found their right to admission into the general government? By what act were they authorized to hold a convention?

7. In the preamble to the constitution of Massachusetts what was affirmed to be the object of the institution, maintenance, and administration of government? Whenever these objects are not obtained, what is the right of the people? How is the body politic formed? Into what

deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other, and of forming a new constitution of civil government for ourselves and posterity, and devoutly imploring His direction in so interesting a design, do agree upon and establish the following declaration of rights and frame of government, as the constitution of the Commonwealth of Massachusetts.

8. The preambles of ten of the constitutions are very short, not containing more than four or five lines. The preamble of the constitution of New York is as follows: "We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this constitution." From the preambles of the several constitutions, State and national, we obtain the following political principles: 1. That the people ordain and establish the government. 2. That the body politic is a voluntary association of individuals. 3. That each citizen enters into a covenant with the whole people, and the whole people enter into a covenant with each citizen. 4. That these covenants are constitutions and laws. 5. That governments are instituted to secure union; to establish justice; to insure tranquillity; to provide for the common defence; to secure the blessings of liberty and transmit them to posterity.

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## CHAPTER XII.

### DECLARATION OF RIGHTS.

1. IMMEDIATELY following the preambles of most of the State constitutions is a declaration of rights. In the Dec-

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covenant do they enter? What is the duty of the people in forming their constitution?

8. What is the preamble to the constitution of New York? What political principles do we obtain from the preambles of the several constitutions? For what objects are governments instituted?

laration of Independence, the following truths are declared to be self-evident: 1. That all men are created equal. 2. That they are endowed by their Creator with certain inalienable rights. 3. That among these rights are life, liberty, and the pursuit of happiness. 4. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. 5. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government; laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

2. Many of these self-evident truths have been incorporated into the declaration of rights in the several State constitutions. The first of these self-evident truths is given in the several State constitutions in six different forms, in all of which the language is slightly altered from that used in the Declaration of Independence. 1. "All men are born equally free and independent." This form is adopted by six States. 2. "All men are born free and equal." 3. "All men, when they form a social compact, are equal in rights." 4. "All men are by nature equally free and independent." 5. "All freemen, when they form a social compact, are equal." 6. "All freemen, when they form a social compact, are equal in rights."

3. All these forms of expression differ from the original, and each is different from all the others; yet all convey, substantially, the same idea. The first great principle of republican government is that of native, inborn equality.

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1. What follows the preamble in most of the State constitutions? What truths are declared in the Declaration of Independence to be self-evident? For what purpose are governments instituted among men? From what do governments derive their just powers? When any government becomes destructive of these ends, what is declared to be the right of the people?

2. Into what have many of these self-evident rights been incorporated? In how many forms is the first self-evident truth named in the Declaration of Independence, given in the several State constitutions?

3. Does any of the six forms of expressions agree fully with the origi-

All men, at all times, when they form a social compact, should be equally under the protection of the law, whether wise or simple, rich or poor.

4. The next self-evident truth, "That all men are endowed by their Creator with certain inalienable rights; that among these rights are life, liberty, and the pursuit of happiness," has been incorporated into the declaration of rights in most of the States, in seven different forms, in all of which the language is slightly altered from that used in the Declaration of Independence.

5. In all cases hereafter, where the same idea is expressed in the several constitutions in forms of language slightly differing, we shall select that form which conveys most clearly the idea intended to be presented, and shall give but one form.

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### CHAPTER XIII.

#### RELIGIOUS WORSHIP.

1. THE freedom of religious worship is described in at least twenty-three different forms in the several constitutions. To give all these forms would occupy more space than the plan of this work will allow. We shall, therefore, give on each point that form of language which conveys most clearly the idea intended to be represented. The points set forth are as follows: 1. That among our

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nal? What do all express? What should be the condition of all men when they form a social compact?

4. In how many forms has the self-evident truth, "that all men are endowed by their Creator with certain inalienable rights," been incorporated into the State constitutions?

5. In all cases hereafter, where the same idea is expressed in different forms, in the several constitutions, what form will be selected? Will more than one form be given?

1. In how many different forms, in the several constitutions, is the freedom of religious worship described? Are these forms given? What form of language is given on each point? Why are some natural rights

natural rights, some are in their very nature inalienable, because no equivalent can be given or received for them. 2. That it is the right, as well as the duty, of all men in society, publicly and at stated times, to worship the Supreme Being, the great creator and preserver of the universe; and that this right is inalienable. 3. That each individual shall exercise this right according to the dictates of his own conscience. 4. That this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of society, or injure others in their civil and religious rights. 5. That no person can justly be deprived of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship. 6. That no authority can be assumed by, or vested in, any power whatever, to interfere with or in any manner control the rights of conscience in the free exercise of religious worship. 7. That God has created the mind free, and all attempts to influence it by temporal punishment or civil incapacities, tends to beget habits of hypocrisy and meanness. 8. That no person shall be compelled to frequent or support any religious worship, except in fulfilment of his own voluntary contract. 9. That it is the duty of all men frequently to assemble together for the public worship of the Author of the Universe; and that piety and morality, on which the prosperity of communities depends, are thereby promoted. 10. That every denomination of Christians, demeaning themselves quietly and as good citizens of the State, shall be equally under

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inalienable? What is the right and duty of each individual in society, as to public worship? How is he to exercise this right? What will the liberty of conscience neither excuse nor justify? Of what can no person be deprived, on account of his religious sentiments and mode of worship? Can any power of government control or interfere with the rights of conscience in the exercise of religious worship? How has God created the human mind? What effect will attempts to influence it by temporal punishment or civil incapacities have? Should any person be compelled to support any religious worship? For what purpose is it the duty of all men to assemble together? What is thereby promoted? Who are equally under the protection of the law? Can any one sect be subordi-

the protection of the law. 11. That no subordination of any one sect or denomination to another can ever be established by law. 12. That Congress can make no law respecting an establishment of religion, or prohibiting the free exercise thereof. 13. That no religious test shall be required as a qualification for office or public trust in the State.

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## CHAPTER XIV.

### SOURCE OF POLITICAL POWER.

In describing the source of political power, the people of the several States have adopted eighteen different forms; and only four States agree precisely in any one form. The political principles set forth under this head in the several constitutions are as follows: 1. All political power is inherent in the people. 2. All governments are formed on their authority and instituted for their benefit. 3. The people of each State have the sole and exclusive right of governing themselves as a free and independent State. 4. The people of the State do now, and shall forever, exercise and enjoy every power, jurisdiction, and right which is not, or may not hereafter be, by them delegated to the government of the United States. 5. The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

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nated to another? What laws are Congress prohibited from making? What cannot be required as a test of qualification for office?

CHR. 14. How many forms have been adopted in describing the source of political power? How many States give the same form? In whom is all political power inherent? Upon what authority are governments formed? For whose benefit? What right have the people of each State? What do they exercise and enjoy? What powers are reserved to the States? What are the officers of government? To whom accountable? For what purpose are governments instituted? Can government be hereditary? When may the people require their officers to return to private life? How may they fill their places? When have the people a right

6. All officers of government, vested with authority, whether legislative, executive, or judicial, are only the trustees and agents of the people; and are, at all times, accountable to them. 7. Governments are instituted for the protection, safety, prosperity, and happiness of all the people; and not for the profit, honor, or private interest of any one man, family, or any class of men. 8. Government cannot be hereditary or transmissible to children, descendants, or relatives by blood. 9. The people have the right to cause their public officers to return to private life at such periods, and in such manner, as they shall establish by their frame of government; and to fill such vacant places by certain and regular elections and appointments. 10. Whenever the ends of government are perverted, or public liberty manifestly endangered, and all other means of redress are ineffectual, or where their protection, safety, prosperity, or happiness require it, the people have the right to reform the old or establish a new government. 11. The doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind. 12. The basis of our political system being the right of the people to make and alter their constitution of government, *the constitution which at any time exists*, until changed by the explicit and authentic act of the whole people, *is sacredly obligatory upon all*.

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## CHAPTER XV.

### LIBERTY OF SPEECH AND OF THE PRESS.

THE liberty of speech and of the press is described in the several constitutions in eighteen different forms. Six

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to reform the old or establish a new government? What is declared in reference to the doctrine of non-resistance against arbitrary power and oppression? What is the basis of our political system? What is sacredly obligatory upon all?



States have adopted the same form. The doctrine of the liberty of speech and of the press, as set forth in the several constitutions, is as follows: 1. The free communication of thought and opinion is one of the invaluable rights of man. 2. The liberty of the press is essential to the security of freedom in a State. 3. The freedom of speech and debate in the legislature is so essential to the rights of the people, that it cannot be the foundation of any prosecution or complaint in any other place whatsoever. 4. Every citizen may freely speak, write, and publish his sentiments on any subject, being responsible for the abuse of this liberty. 5. No law shall be passed restraining the freedom of the press. 6. In prosecutions or indictments for libel, the truth may be given in evidence to the jury. 7. If the matter charged as libellous shall appear to the jury to be true, and to have been published with good motives and for justifiable ends, the party accused shall be acquitted. 8. The jury shall have the right to determine the law and the facts, under the direction of the court. 9. Congress can make no law abridging the freedom of speech or of the press.

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## CHAPTER XVI.

### PERSONAL SECURITY.

THE subject of personal security is presented in fifteen different forms in the several constitutions. The

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CH. 15. In how many different forms is the liberty of speech and of the press described in the several constitutions? How many States have adopted the same form? What is declared to be one of the invaluable rights of man? To what is the liberty of the press essential? What privilege belongs to the freedom of speech and debate in the legislature? What may every citizen freely speak, write, and publish? For what is he responsible? What law cannot be passed? In prosecutions and indictments for libel, what evidence may be given to the jury? In what case shall the party accused be acquitted? What have the jury a right to determine? What law is Congress prohibited from making?

doctrine as therein set forth is as follows: 1. Every person has a right to be secure from all unreasonable searches and seizures of his person, his house, his papers, and all his possessions. 2. General warrants, whereby an officer may be commanded to search suspected places without evidence of the offence committed, or to seize any person or persons not named, whose offences are not particularly described, and without oath or affirmation, are dangerous to liberty. 3. No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

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## CHAPTER XVII.

### RIGHTS OF THE ACCUSED IN CRIMINAL ACTIONS.

THE rights of the accused in criminal cases are presented in sixteen different forms in the several constitutions. These rights, as therein set forth, are as follows: 1. In all criminal prosecutions, every man has a right to be informed of the accusation against him. 2. Every man being presumed innocent until he is pronounced guilty by the law, no act of severity which is not necessary to secure the accused person can be permitted. 3. He shall have the assistance of counsel for his defence. 4. He has a right to be heard by himself and his counsel. 5. He is entitled to a copy of the indictment or charge against him, in due time to prepare for his defence. 6. He is entitled

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CH. 16. In how many different forms is the subject of personal liberty presented in the several constitutions? From what has every person a right to be secure? What are general warrants? What is declared in reference to such warrants? Upon what only shall a warrant issue? What shall be described in such warrant?

CH. 17. In how many different forms are the rights of the accused in criminal cases presented in the several constitutions? Of what has the accused the right to be informed? Until what time is every man presumed to be innocent? What is the only act of severity which can be permitted before

to a speedy, public, and impartial trial by jury. 7. He is entitled to meet the witnesses, in their examination against him, face to face. 8. He is entitled to have compulsory process, on application, in due time, by himself or counsel, for obtaining witnesses in his favor. 9. He is entitled to have all the witnesses examined on oath. 10. He cannot be compelled to furnish evidence against himself. 11. He cannot be found guilty, without the unanimous verdict of the jury. 12. No person can be held to answer for a capital or other infamous crime, but on an indictment or presentment of a grand-jury, except in cases of impeachment, or in cases usually cognizable by justices of the peace: and except, also, in cases arising in the army and navy, in actual service, in time of war or public danger. 13. All persons, before conviction, may give bail for their appearance at court at the time of trial, except those arrested for a capital offence, where the proof is evident or the presumption great. 14. Excessive bail shall not be required; excessive fines shall not be imposed: and unusual punishments shall not be inflicted. 15. All penalties shall be proportioned to the nature of the offence. 16. Every freeman restrained of his liberty is entitled to a remedy, to inquire into the lawfulness of such restraint, and to remove the same if unlawful. Such remedy is called a writ of *habeas corpus*, which cannot be suspended or denied, except in cases of rebellion or invasion, the public safety may require it. 17. No person shall be liable to be tried a second time for the same offence, after an acquittal. 18. In criminal cases, and in controversies respecting property, the ancient trial by jury

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that time? What aid shall he have for his defence? By whom shall he be heard? To a copy of what is he entitled? When is he entitled to be tried? By whom? When is he entitled to meet face to face? How may he compel witnesses in his favor to attend the trial? On what must all witnesses be examined? What is he not compelled to furnish? How many of the jurors must agree in the verdict? Before a person charged with crime can be held to answer, what must be done by a grand jury? What are the exceptions? Who may give bail for their appearance at court at the time of trial? What shall not be required, or imposed, or inflicted? To what shall all penalties be proportioned? To what remedy

is preferable to any other, and ought to be held sacred. 19. Retrospective laws punishing acts committed before the existence of such laws, and by them declared criminal, are oppressive and unjust. These are called *ex post facto* laws. 20. Treason shall consist only in levying war against the government, adhering to its enemies, and giving them aid and comfort. No person can be convicted of treason, except on the testimony of two witnesses to the same overt act, or on confession in open court. Such conviction shall not cause a forfeiture of the estate of the criminal. 21. Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

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## CHAPTER XVIII.

### THE MILITARY POWER.

THE doctrine set forth in the several constitutions in reference to the military power is as follows: 1. A well-regulated militia is the proper, natural, and sure defence of the State. 2. Standing armies in times of peace are dangerous to liberty, and ought not to be raised or kept up without the consent of the legislature. 3. In all cases, and at all times, the military ought to be under strict subordination to the civil power. 4. No soldier, in time of peace, can be quartered in any house without the con-

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is every person restrained of liberty entitled? What is this remedy called? When only can it be suspended or denied? Can a person be tried a second time after an acquittal? What mode of trial is preferable in criminal cases? What laws are declared to be oppressive and unjust? In what does treason alone consist? How many witnesses are required? What power has Congress as to treason? What shall attainder of treason not work?

CH. 18. What is the proper defence of the State? What is declared in reference to standing armies in times of peace? To what should the military be under strict subordination? Where shall no soldier be quartered

sent of the owner. 5. In time of war, such quartering should be made only in a manner prescribed by the legislature. 6. No person shall be subject to law-martial, except those employed in the army and navy, and the militia in actual service.

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## CHAPTER XIX.

### RIGHT OF PETITION—OF SUFFRAGE, AND REMEDY FOR INJURIES.

THE doctrine set forth in the several constitutions in reference to these subjects is as follows: 1. The people have a right to assemble together to consult for the common good. 2. They have the right to petition the legislature for redress of grievances. 3. They have a right to instruct their representatives. 4. All elections should be free, and without corruption. 5. All men who possess the qualifications required by the constitution and laws of the State, have equally the right of suffrage. 6. Every person in the State is entitled to a certain remedy by law for all injuries or wrongs which he may receive in his person, property, or character. 7. He shall obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the law. 8. Every member of the community has a right to be protected by it in the enjoyment of his life, liberty, and property. He is also bound to contribute his share to the expense of such protection,

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in time of peace? In times of war, how shall such quartering be made? Who only are subject to law-martial?

CH. 19. For what purpose have the people a right to assemble? What right of petition have they? Whom may they instruct? What should be free and without corruption? Who have the right of suffrage? For what is every person entitled to a remedy by law? How shall he obtain right and justice? In what has every member of the community a right to be protected by it? What is he bound to contribute? How only can a

and to yield his personal services when necessary. 9. No part of a man's property shall be taken from him without his consent, or that of the representative body of the people. 10. Whenever private property shall be applied to public use, the owner thereof shall receive just compensation therefor. 11. The inhabitants of each State are controlled by no laws except those to which they or their representatives have given their consent.

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## CHAPTER XX.

### RECURRENCE TO FUNDAMENTAL PRINCIPLES.

THE doctrine set forth in the several constitutions on this subject is as follows: 1. The frequent recurrence to fundamental principles of the constitution, and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues, are indispensably necessary to preserve the blessings of liberty and good government. 2. The people ought to have a particular regard to all these principles in the choice of their officers and representatives. 3. They have a right to require of their lawgivers and magistrates an exact and constant observance of them in the formation and execution of the laws necessary for the good administration of government. 4. Long continuance in office is dangerous to liberty. 5. Rotation in office is one of the best securities of perma-

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man's property be taken from him? When private property is applied to public use, what shall the owner thereof receive? By what law only are the inhabitants of each State controlled?

CH. 20. What is indispensably necessary to preserve the blessings of liberty and good government? To what should the people have a particular regard in the choice of their officers and representatives? What have they a right to require of their lawgivers and magistrates? What is the effect of long continuance in office? What is one of the best securities of permanent freedom? Should any person hold two offices of profit at the same time? What should no person in public trust receive without the approbation of his own State?

nent freedom. 6. No person ought to hold at the same time more than one office of profit. 7. No person in public trust should receive any present from any foreign Power or State, or from the United States, or from any of the States, without the approbation of his own State.

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## CHAPTER XXI.

### OBJECTS OF THE DECLARATION OF RIGHTS.

THE objects of the declaration of rights, as set forth in the several constitutions, are as follows: 1. In order effectually to secure the religious and political freedom established by our venerable ancestors, and preserve the same for our posterity, we do declare, that the essential and unquestionable rights and principles herein mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial, and executive proceedings. 2. To guard against any encroachment on the rights herein retained, or any transgression of any of the high powers herein delegated, we declare, that every thing in the declaration of rights is exempted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto shall be void.

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CH. 21. What is the object of the declaration of rights? What is declared in reference to them? In what are they of paramount obligation? What is exempted out of the general powers of government? For what purpose? What is the effect, if laws are made contrary thereto?

## CHAPTER XXII.

## DEPARTMENTS OF GOVERNMENT.

1. THE powers of government are divided into three distinct departments: 1. The legislative; 2. The judiciary; 3. The executive.

2. All the States in the Union agree in dividing the Government into three separate and distinct departments: the power that makes the laws, or the legislative power; the power that applies the law to each particular state of facts proved, or the judiciary power; the power that executes the law, or the executive power. This is equally true of the national government. No power belonging to one of these departments can be exercised by either of the other departments, except in cases expressly authorized by the constitution.

## CHAPTER XXIII.

## ELECTIVE FRANCHISE.

It will be seen by what follows that only about one-sixth of the population of the several States are entitled to exercise the elective franchise. The provisions of the several constitutions agree in most of the following points:

1. Into how many classes are the powers of government divided? What are they?

2. In what do all the States in the Union agree? What is the power that makes the laws called? What is the power that applies the laws called? What is the power that executes the laws called? Are the powers of the national government divided into departments? Can one department exercise the powers belonging to either of the others?

CH. 23. What proportion of the population of the several States are en-



1. No person under the age of twenty-one years is allowed to vote. 2. None but males are allowed to vote. 3. None but residents of the State are allowed to vote. 4. None but citizens are allowed to vote. 5. Some States require a residence of one year in the State, and six months in the county where the elector claims to vote; and other States require but three months' residence in the county. 6. Some States require the elector to possess a freehold estate, or to have performed military duty or paid a State tax. 7. Some States require the elector to possess a good moral character, and to take an oath prescribed for electors. 8. Most of the States exclude from the right of suffrage persons convicted of infamous crimes. 9. Paupers, persons under guardianship, and Indians not taxed, are generally excluded. 10. Free negroes, in some States, are allowed to vote on an equality with white citizens. In other States, where no property qualification is required of free white male citizens, they are required to have a freehold of two hundred and fifty dollars over and above all debts and encumbrances charged thereon, and to have paid a tax thereon; and in other States no free negro, mulatto, or person of mixed blood, descended from negro ancestors to the fourth generation, inclusive, are allowed the right of suffrage. 11. Electors are generally privileged from arrest in going to, remaining at, and returning from the place of voting, except in cases of treason, felony, or breach of the peace.

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titled to exercise the elective franchise? How old must a person be to be entitled to vote? Are women and children allowed to vote? Where must the elector reside? Are foreigners allowed to vote? How long a residence do the States require before a person is entitled to vote? What property qualification do some States require? Is character a test of qualification in any of the States? If a person has been convicted of an infamous crime, is he allowed to vote? What is the general rule of law as to paupers, and Indians not taxed? What is the rule as to free negroes and mulattoes? When are electors privileged from arrest?

## CHAPTER XXIV.

## THE LEGISLATURE.

1. THE power in the government that makes the laws is called the Legislature. It is composed of two distinct branches. The names generally applied to these two branches are: 1. The Senate; 2. The House of Representatives. In some of the States they are called the Senate and Assembly. In the national government they are called the Senate and House of Representatives. The legislative bodies in the States are called Legislatures. The legislative body of the nation is called Congress. The legislative body of the government of Great Britain is called Parliament. It is composed of two distinct branches: 1. A House of Lords; 2. A House of Commons. The House of Representatives in the States and in the nation is the most numerous branch of the Legislature or of Congress. The senators in most of the States are elected for a longer time than the representatives. In New York there are thirty-two senators elected for two years. There are one hundred and twenty-eight representatives elected for one year. The pay of each is equal. They are entitled to three dollars per day, not to exceed one hundred days. The several States differ in the number and proportion of members of each house, and in the amount received for their services.

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1. What is the legislative power in the government? Of what composed? What are the names generally applied to these two branches? What are they called in some of the States? What is the legislative body in the nation called? What is the legislative body in Great Britain called? Of what is it composed? Which is the larger in the States, the House of Representatives or the Senate? Which are elected for the longer time? How many senators in New York? How many representatives? For what time are each elected? What is their compensation? Have the States the same or different numbers of members of the Senate and House of Representatives?

2. Members of the House of Representatives, both State and national, are elected by the direct vote of the people. Members of the State Senates are elected by the direct vote of the people. Members of the national Senate are elected by the legislatures of the several States, in joint ballot of the State Senate and House of Representatives. Members of the State legislatures must be twenty-one years of age, and otherwise qualified to vote. Representatives in Congress must be twenty-five years of age, and senators must be thirty. They receive three thousand dollars per annum.

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## CHAPTER XXV.

### THE JUDICIARY.

1. THE second branch of government is the judiciary. The business of the judiciary is to preside in court over the investigation of all controversies in law for the settlement of claims or the punishment of crimes; to instruct the jury on points of law applicable to the case under investigation before them; and to pronounce sentence upon all criminals when found guilty by the jury.

2. The judicial powers of the States and of the nation are vested in courts of various grades. The Supreme Court of the United States is the highest court in the nation. The Court of Appeals is the highest court in the State of New York. There are courts of inferior grades: the Supreme

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2. How are members of the House of Representatives elected? How are members of the State Senate elected? How are members of the United States Senate elected? What are the qualifications of members of the State legislatures? What are the qualifications of members of the national House of Representatives? What are the qualifications of senators in Congress? What is the pay of members of Congress?

1. What is the second branch of government? What is the business of the judiciary?

2. In what are the judicial powers of the State and nation vested? Which is the highest court of the nation? Which is the highest court

Court of the State, the Superior Court, the Court of Common Pleas, County Courts, Justices' Courts.

3. The judges of the United States courts are appointed by the president, with the consent of the Senate. They hold their office during good behavior. In most of the States, the judges are elected by the people for a limited period of time.

4. The judicial powers of the national government extend: 1. To all cases in law and equity arising under the constitution and laws of the United States and treaties with foreign countries; 2. To all cases affecting ambassadors and other public ministers and consuls; 3. To all cases of admiralty and maritime jurisdiction; 4. To controversies to which the United States shall be a party; 5. To controversies between two or more States; 6. To controversies between a State and citizens of another State; 7. To controversies between citizens of different States; 8. To controversies between citizens of the same State claiming lands under grants of different States; 9. To controversies between a State or the citizens thereof and foreign States, citizens, and subjects.

5. The judicial powers of the State governments extend to all cases, both in law and equity, arising under the constitution and laws of the State.

of the State of New York? Which are the State courts of inferior grades?

3. How are the judges of the United States courts appointed? For what time do they hold office? What is the mode of selecting judges in most of the States? For what time do they hold their office?

4. If an action arises under the constitution or laws of the United States, or treaties with foreign countries, in what court must it be prosecuted? If it affects ambassadors and other public ministers and consuls? If it is a case of admiralty and maritime jurisdiction? If the United States is a party? If the action be between two States? If between a State and a citizen of another State? If between citizens of different States? If between citizens of the same State claiming lands under grants of different States? If between a State or citizen thereof and a foreign State, citizen, or subject?

5. To what do the judicial powers of the State extend?

## CHAPTER XXVI.

## THE EXECUTIVE.

1. THE third branch of government is the executive. In the national government the executive power is vested in a President. In the State governments the executive power is vested in Governors. The president holds his office for four years. Most of the governors hold their office for two years, but some hold for only one year. Governors are elected by the direct vote of a majority or plurality of the electors in the State. In the election of president, each State elects as many electors as it is entitled to members in both houses of Congress; and these electors elect the president by a majority vote. The vice-president is elected in the same manner. If no person has a majority of all the votes of the electors, the House of Representatives choose a president, who must be one of the three highest voted for by the electors. If no person has a majority of all the votes of the electors, the Senate choose the vice-president from the two highest candidates voted for by the electors.

2. The president must be a natural-born citizen, or a citizen of the United States at the time of the adoption of the constitution. He must be thirty-five years of age. In most of the States the governor must be a natural-born citizen of the United States, and is required to be thirty years of age.

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1. What is the third branch of government? In what officer is the executive power vested in the national government? In the State governments? For what time does the president hold his office? For what time do the governors hold their office? How are governors elected? How is the president elected? How is the vice-president elected? If no person has a majority of the votes of the electors, by whom is the president elected? By whom is the vice-president elected?

2. Can a person born in a foreign land hold the office of president? What are the qualifications of the vice-president? Of what age must the

3. The president is commander-in-chief of the army and navy of the United States, and of the militia of the several States, when called into actual service of the United States. The governors of the several States are commanders-in-chief of the military and naval forces of the State. The president has the power to grant reprieves and pardons for all offences against the United States, except in cases of impeachment. Governors of most of the States have the power to grant reprieves, commutations, and pardons, after conviction, for all offences against the laws of the State, except treason and cases of impeachment.

4. The president is required, from time to time, to give to Congress information of the state of the Union, and he recommends to their consideration such measures as he shall judge necessary and expedient. The governors of the States communicate, by message to the legislature at every session, the condition of the State, and recommend to them such measures as they deem expedient.

5. The veto power of the president, and the veto power of the governors in most of the States, is precisely the same. The language in the national constitution is a copy of the language of the State constitutions, with the substitution of the word "president" for the word "governor." The language used in the national constitution is as follows: "Every bill which shall have passed both houses of Congress shall, before it becomes a law, be presented to the President of the United States. If he approve, he shall sign it; but if not, he shall return it, with

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president and vice-president be? What are the qualifications of governors in most of the States?

3. What position does the president hold in the army and navy of the United States? What similar position do governors hold? What pardoning power has the president? What similar power have the governors?

4. What information is the president required to give to Congress? What similar duty are the governors to perform?

5. In whom is the veto power vested in the national government? In whom in the State governments? Is there any resemblance in the exercise of this power in the nation and in the States? To whom must every bill passed by Congress be presented before it becomes a law? For what purpose is it presented to him? If he does not approve of the bill, what

his objections, to the house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall become a law, in like manner as if he had signed it, unless Congress by their adjournment prevent its return; in which case it shall not be a law."

6. In some of the State constitutions a majority only are necessary to pass a bill after it has been returned by the governor; but most of the States require a vote of two-thirds of both houses. It will be seen by what precedes, that greater powers of government are vested in the executive than in either of the other branches of government. The president of the nation and the governors of the States are not only required *to take care that the laws are faithfully executed*, but by their veto they can control the legislature, unless two-thirds in Congress and in most of the State legislatures can be obtained in opposition to such veto. In nearly all criminal cases, also, they have the power to annul the verdicts of jurors and sentences of judges by the pardoning power.

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is he to do? What action is that house to take? If two-thirds of that house shall agree to pass the bill, what shall be done with it? What action does the other house take? How must the votes be taken? Where must the name of each voter be entered? If the bill is not signed by the president nor returned, what is the effect?

6. Are the same provisions contained in the State constitutions? Do all the States require a vote of two-thirds after a veto? Which branch of the government holds the greatest power? What are the president and governors required to do? What may they do by their veto? What may they do by their pardoning power?

## CHAPTER XXVII.

## DISTRIBUTION OF THE POWERS OF GOVERNMENT.

1. It has been before remarked that each State government acts by itself in all matters which belong to that State alone. In the national government, all the States act together in all matters which belong equally to all the States. Those powers which have been confided to the national government are prohibited to the State governments. The national government provides for the common defence. It raises and supports its army and its navy. No State government can keep troops or ships-of-war in time of peace, without the consent of Congress. The national government declares war; but no State government can engage in war unless actually invaded, or in such imminent danger as not to admit of delay.

2. The national government enters into treaties with foreign governments; but no State can enter into any treaty, alliance, or confederation. The national government levies and collects duties on goods imported from foreign countries, which duties are uniform throughout the United States; but no State can levy such duties, without the consent of the national government. The national government coins money, regulates the value thereof, and the value of foreign coin; but no State can coin money, nor make any thing but gold and silver a tender in payment of debts.

3. The national government establishes post-offices and

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1. In what does each State government act by itself? In what matters do all the States act together? What government raises and supports the army and navy?

2. Which government forms treaties with foreign nations? Which government coins money? Can the State governments perform any of these acts?

3. Which government establishes post-offices and defines and punishes



post-roads, and regulates the same; but the State governments have no control of the postal arrangements of the country. The national government grants copyrights and patent-rights to authors and inventors; but the State governments have no such power. The national government defines and punishes piracies and felonies committed on the high seas, and offences against the law of nations; the State governments have no such power; but they define and punish all crimes committed within the State.

4. The national government exercises exclusive jurisdiction and legislation in all cases whatsoever over the district which has become the seat of government of the United States; and it exercises exclusive or concurrent jurisdiction over all places purchased from the States (in which the same are located), for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. The national government cannot grant titles of nobility; neither can the States grant titles of nobility. The powers not delegated to the national government by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. The national government guaranties to each of the States in the Union a republican form of government, and protects them against invasion. On application of the legislature, or of the governor when the legislature cannot be convened, the national government will protect the State against domestic violence.

5. The State government, in their right of sovereignty, possess the original and ultimate title to all the lands within the jurisdiction of the State. The citizen holds his

piracies committed on the high seas? What crimes do the States define and punish?

4. What government legislates for the District of Columbia? What jurisdiction does the national government exercise over places procured from the States for the erection of forts, magazines, arsenals, and dockyards? What does the national government guaranty to each State government? When will the national government protect a State against domestic violence?

5. In which government is the title to the lands? How does the citi-

lands subject to the superior title of the people of the State. The State may take such lands or other property for public use, upon payment of a just compensation therefor. On failure of title for defect of heirs, the title reverts to the State. Hence, the State has exclusive authority to make all laws regulating the acquisition, the enjoyment, and transmission of all the real and personal property within the State.

6. The State—1. Regulates the descent of the property of its citizens who die intestate; 2. Grants to its citizens power to devise or bequeath their property by last will and testament; 3. Defines the right of the widow to dower, and the right of the husband to courtesy; 4. Defines the powers and duties of executors and administrators; 5. Creates corporations; 6. Regulates the boundaries of towns, counties, and districts; 7. Prescribes the mode of selecting its public officers; 8. Organizes its militia for the defence of the State; 9. Regulates the assessment and collection of taxes; 10. Provides for the public instruction of the children of the State; 11. Establishes and regulates highways, bridges, and ferries; 12. Provides for the support and maintenance of the poor; 13. Provides employment for beggars and vagrants; 14. Regulates the navigation of rivers; 15. Prescribes the manner of creating and annulling the marriage contract; 16. Defines the effect of such contract upon the property of the parties to the contract; 17. Defines the mutual rights and duties of parent and child, guardian and ward, master and servant; 18. Establishes its courts of justice; 19. Provides for the protection and enforcement of right, and the redress and prevention of wrong; 20. Defines the various crimes, and affixes the degree of punishment. These rights, powers, and duties belong exclusively to the State; and no other

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zen hold his lands? For what purpose may the State take the lands or other property of the private citizen? Upon what condition? On failure of title for defect of heirs, to whom does the title revert? What laws has the State exclusive authority to make?

6. What other matters belong exclusively to the State?

government has a right, under any pretence, to interfere with these domestic rights of the State.

7. The national government, in addition to the powers and duties already mentioned, regulates the boundaries of States; controls and regulates the national territories, and provides for their admission as States; controls the sale of the national lands; makes all laws in reference to internal improvements; holds and controls all forts, magazines, arsenals, and navy-yards; establishes uniform rules of naturalization; and takes such lands or other property as may be necessary for public purposes, upon payment of a just compensation therefor, when the safety and welfare of the nation shall require it.

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## CHAPTER XXVIII.

### CONSTITUTIONS, HOW AMENDED.

1. CONGRESS can propose amendments to the national constitution, and the several legislatures can propose amendments to the State constitutions.

2. On the application of the legislatures of two-thirds of the States of the Union, Congress shall call a convention to propose amendments. When the legislature of the State pass an act authorizing the electors to vote for or against holding a convention to revise the State constitution, and a majority of the electors in the State vote in favor of such convention, the legislature provide by law for the election of delegates to such convention.

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7. What other powers and duties, in addition to those already mentioned, belong to the national government?

1. Who may propose amendments to the national constitution? Who may propose amendments to the State constitutions?

2. On whose application will Congress call a convention to propose amendments? On whose application will the legislature provide by law for the election of delegates to a convention to revise the State constitution?

3. The proposed amendments made by Congress to the national constitution must be ratified by the legislatures of three-fourths of the several States. The proposed amendments made by the legislature to the State constitution must be ratified by the electors in the State by a vote of a majority. Such amendments, so ratified, both State and national, become parts of the constitutions.

4. We have already examined the principal provisions of our State and national constitutions. All the law in reference to the several subjects mentioned is not contained in the constitutions. We shall state some additional provisions in their appropriate places.

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## CHAPTER XXIX.

### SOURCES OF AMERICAN LAW.

1. It is proper here to state that the several colonies, before the Revolution, were bodies politic and corporate. They had their legislative, executive, and judiciary powers and departments of government. They acknowledged allegiance to the government of Great Britain, and claimed the great body of the English law as their law. The Colonial Congress which met at Philadelphia on the 5th of September, 1774, declared unanimously, "That the inhabitants of the English colonies in North America, by the immutable law of nations, the principles of the English constitution, and the several charters or compacts, are entitled to the common law of England, and to the benefit of

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3. How must the amendments proposed by Congress be ratified? How must amendments proposed by the legislature be ratified? What effect do these amendments have when duly ratified?

4. What have we already examined? Is all the law in reference to these subjects contained in the constitutions?

1. What were the several colonies before the Revolution? What departments of government did they have? To whom did they acknowledge allegiance? What did they claim? To what did the Colonial

such of the English statutes as existed at the time of their colonization, and which they have, by their experience, respectively found to be applicable to their several local and other circumstances. That these, his majesty's colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charter, or secured by their several codes of provincial law."

2. When the colonies formed and adopted their State constitutions, they did not claim that they had improved upon the constitution under which the colonies were formed; but they claimed an equality with their brethren who had remained in England. In the first constitution of the State of New York, it was ordered, determined, and declared, that such parts of the common law of England, and of the statute laws of England and Great Britain, and of the acts of the legislature of the colony of New York, as, together, did form the law of said colony on the 19th day of April, 1775, shall be and continue the law of the State, subject to such alterations as the legislature should, from time to time, make concerning the same.

3. They abrogated and rejected all such parts of the common law and statute law as might be construed to establish or maintain any particular denomination of Christians, or to claim allegiance to the government of Great Britain. They also abrogated all parts of the common and statute laws repugnant to the constitution.

4. At the time the colonies became independent, they retained the whole body of the statute and common laws which were applicable to them in their new form of government. They still retain a large proportion of that law,

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Congress declare that the colonies were entitled? To what other immunities and privileges were they entitled?

2. Did the colonies claim to have improved upon the constitution under which they were formed? What did they claim? In establishing the first constitution of New York, what laws did that colony declare should continue the law of the State? Subject to what?

3. What did they abrogate and reject?

4. What did the colonies retain when they became independent? What do they still retain? What are the sources of American law?

either incorporated into their constitutions, their statute laws, or the decisions of the several courts. The sources of American law then are: 1. The national and State constitutions, which are the supreme law of the nation and of the several States; 2. Laws passed by Congress and by the legislatures of the several States; 3. Laws passed by the colonial legislatures and colonial congresses in any State before it became independent; 4. The common and statute laws of England, passed before the colonies became independent; 5. The common law of the United States and of the several States.

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## CHAPTER XXX.

### LAWS OF ENGLAND BEFORE THE REVOLUTION.

1. In the year 1765, Sir William Blackstone published the first volume of his Commentaries on the Laws of England; and each year thereafter published an additional volume, until the four volumes had been published. These works were read and studied in the English colonies in North America with as much interest, and perhaps more, than in England. The colonists claimed that the law of England, as there set forth, was their law, which claim could not be disputed. The first of these lectures had been published separately, in which the distinguished author had declared that "a competent knowledge of the laws of the society in which we live is the proper accomplishment of every gentleman and scholar. As every person is interested in the preservation of the laws of his country, it is incumbent upon every man to be acquainted,

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1. When was the first volume of Blackstone's Commentaries published? When were the three subsequent volumes published? Were these works read by the English colonists? What did the colonists claim? What does the author say is the necessary accomplishment of every gentleman and scholar? What does he say is incumbent upon

at least, with those laws with which he is immediately concerned. Gentlemen of fortune are ambitious to represent their country in parliament. When they occupy that station, they become the guardians of the English constitution, and the makers, repealers, and interpreters of the English law. As legislators, they are delegated to watch, to check, to avert, every dangerous innovation; to adopt, to cherish, any solid and well-weighed improvement. They are bound, by every tie of nature, of honor, and of religion, to transmit the constitution and the laws to posterity, amended, if possible, at least without derogation. It must appear unbecoming in a member of the legislature to vote for a new law while ignorant of the old, to attempt to interpret a law while ignorant of the text on which he comments."

2. The learned author of the Commentaries declares that the end and scope of the British constitution is the security and enjoyment of civil and political liberty. He proceeds to give strong reasons why the laws of their own country should be studied and understood by all classes. The circulation of this lecture had created a general desire to procure the whole work as soon as published, and it was purchased and read extensively among the colonists.

3. Blackstone arranged the absolute rights of individuals under the three following heads: 1. The right of personal security; 2. The right of personal liberty; 3. The right of private property. He had defined the right of personal security to be the legal and uninterrupted enjoyment of life, limb, body, health, and reputation. He had defined the right of personal liberty to be the power of moving to whatever place one's inclination may direct,

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every man? Of what are gentlemen of fortune ambitious? When they become members of parliament, what are their duties? As legislators, to what are they delegated? What are they bound to do? What must appear unbecoming in a member of the legislature?

2. What was declared to be the end and scope of the British constitution? For what does he give strong reasons? What effect had been produced by the circulation of this lecture?

3. How did Blackstone arrange the absolute rights of individuals?

without imprisonment or restraint. The right of private property consists in every man's free use and disposal of his own lawful acquisitions, without injury or illegal diminution. He defines imprisonment to be the confinement of a person in any wise—as keeping a man against his will in a house, arresting him, or detaining him in the streets.

4. These rights, with many others drawn from *Magna Charta*, are incorporated into the declaration of rights of the several American constitutions.

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## CHAPTER XXXI.

### PARLIAMENT.

1. THE supreme power in a government is the power to make laws. This power, in Great Britain, is vested in parliament. Parliament has stood in its present form for nearly six hundred years. In the United States, the power to make laws is vested in Congress. In the States, it is vested in the legislature.

2. Parliament consists of three branches: 1. The king; 2. The House of Lords; 3. The House of Commons. Congress may be considered as consisting of three branches: 1. The President; 2. The Senate; 3. The House of Representatives. Legislatures are composed of three branches: 1. The governor; 2. The Senate; 3. The House of Representatives.

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How did he define personal security? How did he define personal liberty? What is imprisonment?

4. Into what are these rights incorporated?

1. Which is the supreme power in the government? Where vested in the government of Great Britain? How long has parliament stood in its present form? Where is the supreme power vested in the government of the United States? Where is it vested in the State governments?

2. Of what three branches does parliament consist? Of what three branches does Congress consist? Of what three branches do the legislatures consist?



3. The executive power of the government of Great Britain is vested in the king. The executive power in the government of the United States is vested in the president. The executive power in the government of the States is vested in the governor.

4. In parliament, if the House of Lords refuse to pass a bill, it is lost. If the House of Commons refuse to pass it, it is lost. If the king refuses to sign a bill, after it has passed both houses of parliament, it is lost. Each of the three branches has an absolute veto. In Congress, if the Senate refuse to pass a bill, it is lost. If the House of Representatives refuse to pass a bill, it is lost. If the president refuse to sign a bill, after it has passed both houses of Congress, it is lost, unless it can be passed by a vote of two-thirds of the members of each house. The Senate and House of Representatives have an absolute veto, and the president a conditional veto. In the State legislatures, if the Senate refuse to pass a bill, it is lost. If the House of Representatives refuse to pass the bill, it is lost. If the governor refuse to sign the bill, after it has passed both houses, it is lost, unless it can be passed by a vote of two-thirds of the members of each house, in most of the States.

5. The House of Lords consists of two archbishops, twenty-four bishops, and all the peers of the realm. The titles of the peers are: 1. Dukes; 2. Marquises; 3. Earls; 4. Viscounts; 5. Barons. The number of members of the House of Lords is not limited. Some of the peers are

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3. In whom is the executive power vested in the government of Great Britain? In whom is the executive power vested in the government of the United States? In whom is the executive power vested in the governments of the several States?

4. If either house in parliament fail to pass a bill, or the king refuse to sign it, what is the effect? What power has each of the three branches of parliament? If either house in Congress fail to pass a bill, or the President refuse to sign it, what is the effect? What power has each of the three branches of Congress? If either house in the State legislature fail to pass a bill, or the governor refuse to sign it, what is the effect? What power has each of the branches of the legislature?

5. Of what does the House of Lords consist? What are the titles of

entitled to their seats in the House of Lords by descent; others by being created peers; and others by election, as is the case with the sixteen peers who represent the Scotch nobility. Members of the House of Lords are members for life. The Senate of the United States is composed of two senators from each State, chosen by joint ballot of both houses of the legislature, who hold their office for six years. The senators in the State legislatures are elected by the direct vote of the electors. In some of the States senators hold their office for two years, and in others for one year only. Members of the House of Commons are elected by the electors from the body of the people. They hold office until parliament is dissolved, which must occur at the end of seven years, and may occur at the will of the king, or within six months after his demise. Members of the House of Representatives in Congress are elected by direct ballot of the electors, and hold their office for two years. Members of the House of Representatives in the legislature are elected by direct ballot of the electors, and generally hold their office for one year.

6. The crown is hereditary, and the king or queen hold their office for life. The presidency is elective, and the president holds his office for four years. The governorship is elective, and the governor holds his office for one, two, or three years, according to the time limited in the State constitution.

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the peers? What is the number of members of the House of Lords? How entitled to seats in that house? For what time do they hold their office? Of what does the Senate of the United States consist? How elected? For what time? How are senators in the State legislatures elected? For what time do they hold their office? How are members of the House of Commons elected? For what time do they hold their office? How are members of the House of Representatives in Congress elected? For what time do they hold their office? How are members of the House of Representatives in the legislature elected? For what time do they hold their office?

6. For what time do the king and queen hold their office? For what time does the president of the United States hold his office? For what time do the governors of the States hold their office?

## CHAPTER XXXII.

## ORGANIZATION OF LEGISLATIVE BODIES.

1. THE officer who presides in the House of Lords in parliament, and manages the formalities of business, is the lord chancellor, or such other person as shall be appointed by the king's commission. If the king make no appointment, the House of Lords may elect a presiding officer. If he be a lord, he may give his opinion or argue any question in that house.

2. The officer who presides in the Senate of the United States is the vice-president, who is president of the Senate. In case of the absence of the vice-president from the Senate, either supplying the place of the president, or for any other cause, the Senate elect one of their number to preside. The vice-president, when acting as president of the Senate, cannot give his opinion or argue any question in the Senate, nor vote, unless there is a tie; and then he may give the casting vote.

3. The officer who presides in the senates of the several States is the lieutenant-governor, who is president of the Senate. In case of the absence of the lieutenant-governor from the Senate, either supplying the place of the governor, or for any other cause, the Senate elect one of their number to preside. The lieutenant-governor, when acting as president of the Senate, cannot give his opinion or argue any question in the Senate, nor vote, unless there is a tie; and then he may give the casting vote.

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1. Who presides in the House of Lords? If the king make no appointment? If he be a lord, what rights has he?

2. Who presides in the Senate of the United States? In case of his absence, who presides? When the vice-president acts as president of the Senate is he allowed to speak and vote?

3. Who presides in the Senate of the several States? What is he then called? In his absence, who presides? Has the lieutenant-governor, when acting as president of the Senate, a right to speak and vote?

4. The House of Commons in parliament choose their presiding officer, who is known as speaker of the house. This choice must be approved by the king. The speaker of the House of Commons cannot give his opinion or argue any question in the house.

5. The House of Representatives in Congress choose their presiding officer, who is known as speaker of the house. The speaker is elected from among the members of the house, and he can give his opinion or argue any question in the house. He is also entitled to vote.

6. The House of Representatives in the several legislatures choose their presiding officer, who is known as speaker of the house. The speaker is elected from among the members of the house, and he can give his opinion or argue any question in the house. He is also entitled to vote.

7. As soon as both houses of Congress and of the legislatures are fully organized by the choice of the several officers, messages are sent by each house to the other, and to the president or governor, informing him that they are organized and ready to proceed to business. The president of the United States then sends his message to both houses of Congress, and the governor sends his message to both houses of the legislature. The president does not appear in person before Congress, nor do the governors appear in person before the legislatures. The messages are read by the clerk of each house. At the opening of

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4. Who presides in the House of Commons in parliament? By whom chosen? By whom must this choice be approved? Can the speaker argue any question in the house?

5. Who presides in the House of Representatives in Congress? By whom elected? From what body? Is he allowed to speak and vote?

6. Who presides in the House of Representatives in the State legislatures? By whom elected? From what body? Is he allowed to speak and vote?

7. When both houses are fully organized, what is the next business? What action do the president and the governors then take? Does the president appear in person before Congress? Do the governors appear in

parliament, the king, or if a queen be at the head of the government, the queen appears before parliament and delivers a speech in person.

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## CHAPTER XXXIII.

### METHOD OF MAKING LAWS.

1. THE method of making laws is nearly the same in both houses of parliament, in both houses of Congress, and in both houses of the legislature. In parliament, the acts of the majority bind the whole. The same is true in most cases in Congress and in the State legislatures. There are, however, some exceptions. The constitution of the State of New York declares, that, "the assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes."

2. At the commencement of each session, each house adopts certain rules by which its proceedings are to be governed. They determine the order of business, the order of debate, what standing committees shall be appointed, etc. The presiding officer appoints the standing committees.

3. Each house is required to keep a journal of its proceedings, and from time to time to publish the same, except such parts as shall require secrecy. In order to

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person before the legislatures? By whom are the messages read? Does the king or queen appear in person before parliament?

1. In what bodies is the method of making laws nearly the same? In what body does the majority bind the whole? Is this the case in other legislative bodies? What special provision is contained in the constitution of New York?

2. At the commencement of each session, what does each house adopt? What do they determine? Who appoints the standing committees?

3. What is each house required to keep? At the opening of the Senate



understand the process of legislation more fully, let us notice the proceedings in the Senate of the State of New York on any day of the session. The president of the Senate takes the chair, accompanied by some clergyman, at the hour to which the senate was adjourned, and rapping with the gavel says, "The Senate will now come to order." The clergyman then offers prayer. The journal of the preceding day is read by the clerk. The president asks, "Are there any objections to the journal? If there are none, it stands approved."

4. As soon as the journal is read and approved the president announces, "The next order of business is the presentation of petitions." Before any petition addressed to a legislative body can be received or read, a brief statement of the contents thereof must be indorsed thereon, with the name of the member presenting it. A senator (Mr. Stanton) rises in his place and says, "Mr. President, I present the petition of ——" There are a number of small boys appointed by the Senate, called pages. One of these pages approaches the senator, receives the petition, and delivers it to the president of the Senate. The president on receiving the petition says, "The senator from the (25th) presents the petition of ——. It is referred to the committee on the judiciary."

5. If a petition or remonstrance be presented in reference to a matter already in the hands of some committee, it is referred to that committee. There are generally about thirty different standing committees, appointed to investigate the different subjects which may be referred to them.

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who takes the chair? By whom is he usually accompanied? How does he call the Senate to order? What is done immediately after the Senate is called to order? What is the first order of business? What does the president then ask?

4. What does the president then announce? What must be indorsed on every petition before it is presented? How is a petition introduced? By whom is the petition conveyed to the president? What does the president announce to the Senate on receiving the petition?

5. If a petition or remonstrance be presented in reference to a matter already in the hands of a committee, to whom is it referred? About how many standing committees are there in legislative bodies?

6. When all petitions and remonstrances have been presented and referred, the president announces, "The next order of business is the reports of standing committees." A senator (Mr. Babcock) rises in his place and says, "Mr. President, the committee on the judiciary to which was referred the bill entitled, 'An act to exempt from execution the homestead of a householder having a family,' have had the same under consideration, have come to a favorable conclusion thereon, and recommend its passage." The bill is then referred to the committee of the whole. When these committees have reported, the president announces, "The next order of business is reading messages from the executive." The clerk of the senate then proceeds to read:

STATE OF NEW YORK, EXECUTIVE DEPARTMENT.  
ALBANY, March 18, 1850.

TO THE SENATE:

I have this day approved and signed the bill entitled, "An act to authorize the Delaware Plankroad Company to change the location of a portion of their road."  
HAMILTON FISH.

The clerk continues to read all other messages from the governor. The president then announces in their order, "Messages from the other house"—"Communications and reports from government officers," all of which are read by the clerk.

7. The president then announces, "The next order of business is notices and introduction of bills." There are two ways in which bills may be introduced. A petition may be presented to the Senate and referred to a committee, and the committee may report a bill. In such case a senator (Mr. Babcock) rises in his place and reports, that "the committee on the judiciary, to which was referred the petition for that purpose, report a bill entitled,

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6. What does the president next announce? How is a report made? To whom is the bill then referred? As soon as all the standing committees who are ready have made their report, what does the president next announce? By whom are messages from other bodies read? What message from the governor is given?

7. In how many ways may bills be introduced? What is the first? What report is made? If the committee report adversely to the petition,

'An act to repeal certain parts of the Revised Statutes, exempting the property of ministers of the gospel from taxation.'" If the committee report adverse to the prayer of the petitioners, they attach to their report a resolution as follows:

"*Resolved*, That the prayer of the petitioners ought not to be granted." The president then says, "The question is on agreeing to the report of the committee. Those in favor of the resolution will say, Aye. Those opposed, No. The resolution is adopted."

A senator may give notice that he will, at an early day, ask leave to introduce a bill, which notice must state generally the subject-matter of the bill. On the following, or any subsequent day, he may ask leave to introduce the bill. The question will be on granting leave. If leave be granted, the bill is introduced and read by its enacting clause and title. By unanimous consent, it may be immediately read a second time. If any senator objects to the second reading on that day, it cannot be read until the next day. As soon as it is read a second time, it is referred to one of the standing committees or to a special committee. When the committee make their report, it is referred to a committee of the whole. If the bill be reported from a committee on a petition referred to them, it is at once sent to the committee of the whole.

8. At the proper time, when the bill comes up in its order, the president of the Senate leaves the chair, and calls one of the senators to preside, and the Senate goes into a committee of the whole on the bill. The bill is then read, section by section, and thoroughly discussed.

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what resolution is attached to the report? How does the president put the question of agreeing to the report? What is the second mode of introducing a bill? What must the notice state? When may the senator ask leave to introduce the bill? What will be the question to be put to the Senate? If leave be granted, what is done? What part of it is read? When may it be read a second time? After the second reading, to whom is it referred? When the committee make their report, to whom is it then referred? If the bill is reported by a committee, on a petition referred to them, to whom is it referred?

8. Who presides when the Senate are in committee of the whole? If



If the discussion of the whole bill cannot be completed at that time, the committee, on motion, rise and report progress. The chairman of the committee leaves the chair, which is resumed by the president, and the chairman of the committee of the whole reports to the Senate that "the committee of the whole have had under consideration the bill, entitled 'An act to repeal certain parts of the Revised Statutes, exempting property of ministers of the gospel from taxation,' have made some progress thereon, and ask leave to sit again." The question on granting leave is then put to the Senate. But if the Senate, in committee of the whole, have completed the discussion of the bill, the chairman reports that "the Senate have been in committee of the whole on the bill entitled —, and after some time spent thereon, the committee have come to a favorable conclusion, and recommend its passage (with amendments)." The amendments, which have been agreed to in committee of the whole, are again offered in the Senate. The president puts the question to the Senate, whether or not they will agree to the amendments; and, if decided in the affirmative, the question then is on agreeing to the report of the committee of the whole as amended, and, if decided in the affirmative, it is "Ordered, That the bill be engrossed for a third reading."

9. After the bill is engrossed by the clerk of the Senate, it goes into the hands of the committee on engrossed bills, who examine the same, and report it as correctly en-

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the discussion of the bill cannot be completed at one time, what action is taken? When the committee of the whole rise, who takes the chair? What report does the chairman of the committee of the whole make to the Senate? What is the question then put to the Senate? If the committee of the whole have completed the discussion of the bill, what report does the chairman make? If amendments are adopted in committee of the whole, what is to be done? What question does the president put to the Senate? If the question is decided in the affirmative, what is the next question submitted? If this question is decided in the affirmative, what order is made?

9. After the bill is engrossed by the clerk of the Senate, to what committee does it go? What report do they make on it? When is the

grossed. It is then ready for a third reading. When the third reading of bills is reached in the order of business, the bill is read a third time, and the question is put by the president, "Shall the bill pass? Senators, those in favor of the passage of the bill will, as their names are called, answer in the affirmative; those opposed, in the negative. The clerk will proceed to call." The clerk then calls the names of the senators, and announces that "those who are understood to vote in the affirmative are —," repeating all the names of those he has understood to vote in the affirmative. "Those understood to vote in the negative are —," repeating the names of all understood to vote in the negative. This gives each senator an opportunity of being correctly recorded. The names are entered on the journal in the affirmative or in the negative. It is then "Ordered, That the clerk deliver said bill to the Assembly, and request their concurrence therein."

10. The bill is then taken by the clerk to the Assembly, and delivered to the clerk or speaker of the Assembly. At the proper time in the order of business, the speaker announces: "A message from the Senate has been received, requesting the concurrence of the Assembly to the bill entitled —." The bill is then read by its enacting clause and title a first time, and, by unanimous consent, is immediately read a second time, and referred to the appropriate committee. At the proper time in the order of business, one of the members of the committee report that "the committee to which was referred the Senate bill entitled — have had the said bill under consideration, and see no reason why the same should not be passed into a law." Or they may report that "they have come to the

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bill read a third time? What question is put by the president? What does the clerk then do? What does he announce? For what does this give the senators an opportunity? What order is then made?

10. What is done with the bill? What does the speaker announce? When? What action is then taken on the bill? To whom referred? When does the committee report? What report do the committee

conclusion that the same ought not to pass." In either case it is "Ordered, That the said bill be committed to a committee of the whole."

The bill, in its proper order, is taken up and discussed in committee of the whole, and reported to the House in nearly the same manner as in the Senate. It is then ordered to a third reading. The bill is read and passed in nearly the same manner as in the Senate. If passed, it is "Ordered, That the clerk return the said bill to the Senate, and inform them that the Assembly have passed the same without amendments."

If the bill has been amended in the Assembly, it is "Ordered, That the clerk return the said bill to the Senate, and inform them that the Assembly have passed the same with the amendments therewith delivered."

The bill is then returned to the Senate with the amendments. It is announced in the Senate that "a message has been received from the Assembly, informing that they have passed the bill entitled ——." It is then "Ordered, That the clerk deliver said bill to the governor." If the bill is returned from the Assembly with amendments, the amendments are read in the Senate, and the president puts the question, whether the Senate will concur in the amendments of the Assembly; and if the question is decided in the affirmative, it is "Ordered, That the clerk return said bill to the Assembly, with a message informing them that the Senate have concurred in the amendments thereto, and have amended the same accordingly."

The bill as amended is returned to the Assembly, and the speaker, at the proper time, announces that "a mes-

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make? To what committee does it then go? How is it taken up and disposed of in committee of the whole? How read and passed? If passed, what order is entered? If the bill has been amended in the Assembly, what is the order? What is then done with the bill? What announcement is made in the Senate? What order is then made? If the bill be returned from the Senate with amendments, what action is taken? What question is put to the Senate? If decided in the affirmative, what order is made? What is done with the bill as amended?

sage has been received from the Senate, informing that they have concurred in the amendments of the Assembly to the bill entitled —." "Ordered, That said bill be returned to the Senate." When its return is announced in the Senate, it is "Ordered, That the clerk deliver said bill to the governor." The bill is then delivered to the governor; and as soon as he examines the same, and approves and signs it, he forwards a message to the Senate, as follows:

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,  
ALBANY, January 17, 1850.

To THE SENATE:

I have this day approved and signed the bill entitled —.

HAMILTON FISH.

The bill is then sent to the office of the secretary of state, where it is deposited, and safely preserved. If the governor does not approve the bill, he sends it back to the house in which it originated, with his objections.

11. In parliament, if the relief sought be of a private nature, a petition is first presented. That petition is referred to a committee, who report thereon. Leave is then given to bring in a bill. If the relief sought be of a public nature, the bill is brought in without any petition. When a bill is brought in it is read a first time, and, at a convenient distance, a second time; and after each reading the speaker puts the question, whether the bill shall proceed any further. After the second reading, if not successfully opposed, it is referred to a committee. If the bill be an important one, the House resolves itself into a committee of the whole. When in committee of the whole, the speaker leaves the chair, and a member is appointed chairman. After it has been discussed in com-

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What announcement does the speaker make? What order is then entered? When returned to the Senate, what order is made? What is done with the bill? What message does the governor return? What is then done with the bill? If the governor does not approve of the bill, what is to be done?

11. If a bill in parliament be of a private nature, how is it introduced? If the relief sought be of a public nature, how is the bill introduced? What is done with the bill when brought in? After the second read-

mittee of the whole, the committee rise, and the chairman reports the bill to the House with such amendments as the committee have made.

12. The house then takes up the bill, and the question is put on every clause and amendment. It is then ordered to be engrossed. After it has been engrossed, it is read a third time, and the question put, "Shall the bill pass?" If the bill is agreed to, the title is then settled. One of the members is then directed to carry the bill to the other house and desire their concurrence. When a bill is sent from the House of Commons to the House of Lords, it is delivered to the speaker. If the House of Lords reject the bill, no more notice is taken of it. If it be agreed to by the House of Lords, a message is sent by two masters in chancery announcing that they have agreed to the same; and the bill remains with the House of Lords, if they have made no amendments? If amendments are made by the House of Lords, the bill, with the amendments, is sent back to the House of Commons for their concurrence. If the amendments are concurred in by the House of Commons, the bill is sent back to the House of Lords by one of the members, with a message to acquaint them therewith. If the bill originates in the House of Lords, the process is nearly the same. A bill becomes a law when it has received the royal assent. The royal assent may be given in person, or by letters-patent under his great seal, signed by his hand, and notified in his absence to both houses of parliament. When given in person, the king comes into the House of Lords, the House of Commons is sent for, the titles of the bills are

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ing, what reference is made? If the bill be an important one, what is done? What action is taken in committee of the whole?

12. What action is then taken in the house? After it has been engrossed, what is done? By whom is it carried to the other house? To whom delivered? If the House of Lords reject the bill? If it be agreed to in the House of Lords? If amendments are made in the House of Lords? If the amendments are concurred in by the House of Commons? If the bill originated in the House of Lords? When does a bill become a law? How is the royal assent given? When given in person, where

read, and the king's answer is declared by the clerk in Norman-French. If the king consent to a public bill, the clerk declares, *Le roy le veut* (the king wills it). If the king consent to a private bill, the clerk declares, *Soit fait comme il désiré* (be it as it is desired). If the king refuse his assent, the clerk declares, *Le roy avisara* (the king will advise upon it).

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## CHAPTER XXXIV.

### LEGISLATIVE JOURNALS.

1. On the day prescribed by the constitution, members appear in their respective chambers. If the presiding officer has been elected or holds over, he takes the chair and calls the body to order. If there be no presiding officer, the clerk of the last house calls the members to order. The secretary of state then administers to the members the oath of office prescribed by the constitution. One of the members offers, and the house adopts, the following resolution:

*"Resolved, That the house now proceed to choose a speaker; that the list of members be called, and that each, as his name is called, rise in his place and openly nominate the person whom he desires for speaker."*

The member receiving the majority of the votes cast, as the list of members is called, is declared to be duly elected. Two members are appointed to conduct him to the chair. On being conducted to the chair, he delivers a short address. A clerk, sergeant-at-arms, doorkeeper,

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and in whose presence is it given? By whom is the answer declared? In what language? If the king consent to a public bill, what does the clerk declare? If he consent to a private bill, what does the clerk declare? If the king refuses his assent, what does the clerk declare?

1. When do members of legislative bodies appear in their respective chambers? By whom are they called to order? Who generally administers the oath of office? What is the usual mode of electing a speaker? Who is declared elected? What is generally his first act on being conducted to the chair? What other officers are elected? After

and assistant-doorkeepers are elected in the same way. The following resolutions are then offered and adopted, and orders made :

*"Resolved, That a committee of two be appointed by the speaker to wait upon his excellency the governor, and inform him that this house is organized and ready to proceed to business."*

*"Ordered, That Mr. Monroe and Mr. Townsend be such committee."*

*"Resolved, That a committee of two be appointed by the speaker to wait upon the honorable the Senate, and inform that body that the house is organized and ready to proceed to business."*

*"Ordered, That Mr. Bradford and Mr. Graham be such committee."*

"Mr. Monroe, from the committee to wait upon the governor and inform him that the house is organized and ready to proceed to business, reported, that 'the committee had discharged their duty ; and that his excellency was pleased to say that he would forthwith communicate with the house by message.'"

The private secretary of the governor then enters the house and delivers to the speaker the message of the governor, which is read by the clerk of the house. At the conclusion of the reading of the message, the following resolution is generally adopted :

*"Resolved, That the message be committed to a committee of the whole house, and that ten times the usual number be printed for the use of the members of this house, and three hundred and fifty for the use of his excellency the governor."*

*"On motion, the house then adjourned."*

2. All proceedings in legislative bodies are entered in the journal, except when in committee of the whole. We will now journalize some of the proceedings described in the last chapter, in order that the reader may see the mode of recording such transactions.

"STATE OF NEW YORK,  
SENATE CHAMBER, IN THE CITY OF ALBANY,  
Tuesday, March 18, 1850.

*"The Senate met pursuant to adjournment."*

*"Prayer by the Rev. Dr. Potter."*

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all the officers are chosen, what resolution is offered ? What order is made ? What report does the committee make ? By whom does the governor send his message to each house ? By whom is the message read ? What resolution is offered at the conclusion of the reading of the message ?

2. What proceedings are entered in the journal ? How is the journal

"The journal of yesterday was read and approved.

"Mr. Stanton presented the 'petition of —,' which was referred to the committee on the judiciary.

"Mr. Babcock, from the committee on the judiciary, to which was referred the bill entitled, 'An act to exempt from execution the homestead of a householder having a family,' reported the same for the consideration of the senate, which was committed to a committee of the whole.

"A message was received from the governor in the words following:

STATE OF NEW YORK, EXECUTIVE DEPARTMENT,  
ALBANY, March 18, 1850.

TO THE SENATE:

I have this day approved and signed the bill, entitled 'An act to authorize the Delaware Plankroad Company to change the location of a portion of their road.'

HAMILTON FISH.

"Mr. Cross gave notice that he would at an early day ask leave to introduce 'A bill to incorporate the Oswego Hospital.'

"In pursuance of previous notice, Mr. Beekman asked for and obtained leave to introduce a bill entitled, 'An act to revise and condense into one, the several acts relating to the harbor-masters of the port of New York,' which was read the first time, and by unanimous consent was also read the the second time, and referred to the committee on commerce and navigation.

"On motion of Mr. Upham,

*Resolved*, That the canal commissioners report to the senate what action has been had by them, in relation to the supply of water for the Erie Canal, between Tonawanda and Montezuma.

"The bill entitled, 'An act to reorganize and regulate the common-schools and the board of education, in the city of Brooklyn,' was read a third time and passed, a majority of all the members elected to the Senate voting in favor there-

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of each day commenced? What is generally the first act? What is the first order of business? What record is made of the presentation of petitions and remonstrances? What record is made of the reports of standing committees? When a message is received from the governor, what record is made? What record is made of notices and introduction of bills? What record is made of the introduction of resolutions? What



of, and three-fifths of all the members elected to the Senate being present on the final passage thereof, as follows: (here follow the names of all the senators voting on the bill.)

*“Ordered,* That the clerk deliver said bill to the Assembly, and request their concurrence therein.

“The Senate then resolved itself into a committee of the whole upon the bill entitled, ‘An act to repeal certain parts of the Revised Statutes exempting property of ministers of the gospel from taxation,’ and after some time spent thereon, Mr. Cook, from the said committee, reported in favor of the passage of the same with amendments, which report was agreed to, and said bill ordered to be engrossed for a third reading.

“On motion of Mr. Carroll the Senate then adjourned until 10 o’clock to-morrow morning.”

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## CHAPTER XXXV.

### REVISED STATUTES.

1. EACH State in the Union has consolidated and arranged in appropriate chapters, titles, and sections the several statutes of the State. These statutes, thus arranged, are known as the Revised Statutes of the State. Changes may be made in these statutes by subsequent laws, and after many years the statutes may need a further revision. The Revised Statutes of some of the States are extended to more than two thousand pages, and of all the States to more than fifty thousand pages. It has already been seen that there is a great similarity

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record is made of the third reading of bills? What order is made? What record is made of the discussion of bills in committee of the whole?

1. How has each State arranged its statutes? What are these statutes thus arranged called? Can any of the statutes be changed by subsequent statutes? How extensive are these statutes? Is there great similarity in the constitutions of the several States? Is there any sim-

in the constitutions of the several States. It may here be remarked that there is as great similarity in the laws founded upon the constitutions, as in the constitutions themselves. There is also in many instances a striking resemblance between these statutes and the existing statutes in England. I shall, in the following pages, give as full description of these statutes as the limits of this work will admit.

2. A minute description of every point, line, direction, and distance in the boundary of the State is minutely described in the Revised Statutes. Such description sometimes extends through several pages. It is then declared that the sovereignty and jurisdiction of the State extends to all places within the boundaries thereof; but the extent of such jurisdiction, over places which have been ceded to the United States for forts, arsenals, dock-yards, light-houses, hospitals, etc., shall be qualified by the terms of such cession. It is made the duty of the governor and of all the subordinate officers of the State, to maintain and defend its sovereignty and jurisdiction.

3. In Massachusetts, about forty places have been ceded to the United States for similar purposes to those above mentioned. In New York, about fifty places have been ceded for like purposes. The cession of these places to the United States does not generally prevent the execution, within their boundaries, of any process, civil or criminal, under the authority of the State, except so far as such process may affect the real or personal property of the United States therein. The boundaries of all these places are minutely described.

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ilarity between the statutes of the several States? What other body of laws do they resemble, in many instances? What will be given in the following pages?

2. What is first described in the statutes of most of the States? What is then declared? How is the sovereignty and jurisdiction of the State over places ceded to the United States qualified? What is made the duty of the governor and all subordinate officers of the State?

3. How many places are ceded to the United States in the State of Massachusetts? How many in New York? What does the cession of these places not prevent?

4. The division of the State into counties, and a minute description of the boundaries of each county, is given. The division of the counties into towns, with the boundaries of each town, is given. The boundaries of each city in the State, and the boundaries of each ward in each city, are given. The State is also divided into senatorial, congressional, and judiciary districts, the boundaries of which are minutely described. In the State of New York the description of these divisions and boundaries occupies more than two hundred pages of the Revised Statutes.

5. The statutes, in most of the States, then describe the several officers in the State, with their qualifications and tenure of office. These officers are divided into three classes: 1. Legislative; 2. Judicial; 3. Executive. In the State of New York a fourth class is added, called administrative officers. No person is competent to hold a civil office under twenty-one years of age, nor unless he be a citizen of the State at the time of his election or appointment.

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## CHAPTER XXXVI.

### MODE OF ELECTING STATE OFFICERS.

1. THE statutes next describe the mode of electing public officers. The mode adopted in a majority of the States is as follows. The secretary of state causes to be delivered to the sheriff, clerk, or county judge in each county, a notice in writing specifying the officers to be chosen at the next regular election. He also causes the same to be pub-

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4. What boundaries are next described? What space does this description occupy in the Revised Statutes of New York.

5. What is next described? Into what three classes are these officers divided? What fourth class is added in the State of New York? How old must a person be to hold office? Where must he reside?

1. What do the statutes next describe? What mode is here given?

lished in the State paper once in each week from the date thereof to the time of election. The sheriff, or other officer who receives the notice from the secretary of state, forthwith delivers a copy of such notice to the supervisor or one of the assessors in each town or ward in his county. He also causes a copy of the notice to be published in all the public newspapers in the county. The supervisors, assessors, and town-clerk in the several towns, and the common council in cities, designate the places for holding the election.

2. The inspectors of each election district meet at the time and place when and where the election is to be held, and organize themselves as a board. They appoint one of their number chairman, who administers the oath of office to the others, and one of the others administers the oath to the chairman. They then appoint a clerk, to whom the chairman administers the oath. When the poll is opened, proclamation thereof is made. The polls are usually opened at sunrise and close at sunset.

3. The electors vote by ballot. The ballots are so folded as to conceal their contents. Each elector delivers his ballot to one of the inspectors in presence of the board. If any person offering to vote is challenged by one of the inspectors, or by any elector who has voted at that poll, one of the inspectors tenders to him the following preliminary oath:

"You do swear that you will fully and truly answer all such questions as shall be put to you touching your place of residence and qualifications as an elector."

One of the inspectors then questions the person offering to vote. If the challenge is not withdrawn, and the elector

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Who gives notice of the election? How? How does the sheriff give notice in his county? Who determine the place of holding elections?

2. Where do the inspectors meet? What do they appoint? How is the oath of office administered? For what time are the polls usually kept open?

3. How do the electors vote? How are the ballots folded? To whom does each elector deliver his ballot? By whom may any person offering to vote be challenged? What oath is then tendered to him? After this preliminary oath, what is done? If the challenge is not withdrawn, what

insists on his right to vote, one of the inspectors administers to him the following oath :

"You do swear that you have been a citizen of the United States for ten days, and are now of the age of twenty-one years ; that you have been an inhabitant of this State for one year next preceding this election, and for the last four months a resident of this county ; that you have been for thirty days next preceding this election a resident, and that you are now a resident, of this election district in which you offer to vote ; and that you have not made any bet or wager, and are not directly or indirectly interested in any bet or wager depending upon the result of this election."

If any person offering to vote refuses to take the above oath, his vote is rejected.

4. Separate boxes are prepared and properly labelled. They are locked before opening the polls, and the key delivered to one of the inspectors. An opening is made sufficiently large to admit a single ballot, through which the ballots are inserted. A list of the persons voting is kept by the clerk, and a list of the ballots cast by each voter. As soon as the polls are closed, the inspectors proceed to canvass the votes. The poll-list is examined and corrected. One of the boxes is opened and the ballots therein counted, unexamined, except so far as to ascertain that each ballot is single. If two or more ballots are so folded together as to present the appearance of a single ballot, they are destroyed, if the whole number of ballots exceed the whole number of voters. If the whole number of ballots exceed the whole number of voters on the poll-list, the ballots are replaced in the box, and one of the inspectors draws out and destroys as many ballots unopened as are equal to such excess.

5. The inspectors then proceed to open and count the ballots. They make out a statement of the result, and at-

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other oath is administered ? If the person offering to vote refuses to take the prescribed oath ?

4. In what are the ballots deposited ? How are the ballot-boxes made and secured ? What list is kept by the clerks ? As soon as the polls are closed, what do the inspectors proceed to do ? What is first examined ? Are the ballots examined before they are counted ? If two ballots are folded together ? If the whole number of ballots exceed the whole number of voters ?

5. What is the next action of the inspectors ? What do they make

tach one ballot of each kind to the statement. They also attach such ballots as they deem defective. The statement is certified by the inspectors to be true. A copy is filed in the office of the town or city. The original statement is delivered to the supervisors.

6. The supervisors, or assessors, form a board of county canvassers. They meet at the office of the county clerk. The clerk of the county is the secretary of the board. They elect a chairman. The clerk administers the oath to the chairman, and the chairman administers the oath to the members of the board. A majority is sufficient to constitute a quorum. The original statements are produced, and the board proceed to estimate the vote of the county, and make a statement thereof. The statement is delivered to, and deposited with, the county clerk.

7. The county clerk records the statement of the board. He then prepares three certified copies. He deposits in the post-office one directed to the governor, one to the secretary of state, and one to the comptroller. The county clerk prepares certified copies for persons declared elected in the county, and delivers one of such copies to each person so elected. He also transmits a list to the secretary of state. The secretary of state files the certified statement of the county clerks. He appoints a meeting of the State canvassers at his office. The secretary of state, comptroller, State engineer, attorney-general, and treasurer are the State canvassers, three of whom are sufficient to form a quorum.

8. The board, when convened, proceed to determine

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out? What do they attach to the statement? How certified? Where is a copy filed? What is done with the original statement?

6. Who form a board of county canvassers? Where do they meet? Who is the secretary of the board? By whom is the oath administered? What number constitute a quorum? What does the board proceed to make out? To whom is it delivered?

7. By whom recorded? What does the county clerk prepare? To whom does he send certified copies? What does the secretary of state file? What meeting does he appoint? Of whom does the board consist?

and declare what State officers have been duly elected by the greatest number of votes. They make a statement, and deliver the same to the secretary of state. The secretary of state records such statement in his office. He transmits a certified copy to each person thereby declared elected. He also publishes the same in one or more newspapers in each senatorial district in the State.

9. This is substantially the process of electing State, county, and town officers in the State of New York. This plan is adopted in most of the States. Some of the States have, however, adopted a plan slightly different. Each State has the right to adopt such plan as may appear to them to secure the unbiased expression of the will of the people.

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## CHAPTER XXXVII.

### MODE OF ELECTING NATIONAL OFFICERS.

1. REPRESENTATIVES in Congress are elected in the several congressional districts in the same manner as State officers are elected. The election occurs once in two years, at the time of the general election. Senators in Congress are elected by the joint ballot of both houses of the legislature. Each senator, so elected, holds his office for six years, unless elected to fill an unexpired term.

2. In electing the president and vice-president of the United States, the electors do not vote directly for the candidates. Each State is entitled to the same number

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8. What action do the board take? To whom delivered? By whom recorded? To whom does he transmit certified copies?

9. Do all the States adopt precisely the same plan? What right has each State?

1. How are representatives to Congress elected in the several States? How often does such election occur? How are senators in Congress elected?

2. Do electors vote directly for president and vice-president? To what

of votes, in the choice of president and vice-president, as it is entitled to members in both houses of Congress. Each State nominates and elects this number of electors to vote for president and vice-president. The process of giving notice, voting, and making returns to the State canvassers is the same as in the choice of State officers.

3. The secretary of state transmits to each elector a certificate of his election. The electors meet at the capital of the State on the first Wednesday in December after the election. When assembled, they are known as the electoral college. They first fill all vacancies, then choose a president and secretary from their own number. The secretary of state then produces three lists of the names of the electors, under the signature of the governor, with the seal of the State affixed thereto, and delivers them to the chairman. The electors then proceed to vote by ballot for president and vice-president. They make distinct lists of all persons voted for as president and as vice-president, and the number of votes cast for each. They affix to this list a list of the electors received from the secretary of state. They seal up the same, and certify thereon that lists of the votes of the State for president and vice-president are contained therein. The electors appoint a messenger to take charge of the same and deliver it to the president of the Senate, at the seat of government of the United States. A similar list is forwarded by mail to the president of the Senate, and another to the judge of the United States District Court, in the State.

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number of votes is each State entitled in the choice of president and vice-president? What does each State nominate and elect? What is the process of giving notice, voting, and making returns?

3. What does the secretary of state transmit to such elector? When and where do the electors meet? When assembled, by what name are they known? What is their first action? What lists does the secretary of state then produce? Under what signature and seal? How do the electors vote? What lists do they make? What do they affix to this list? How indorsed? What indorsement is made thereon? What do the electors then appoint? For what purpose? To whom is a similar list forwarded by mail?



## CHAPTER XXXVIII.

## OFFICIAL DUTIES.

1. ALL State and national officers are obliged to take an oath before entering upon the duties of their office. The President swears, "That he will faithfully execute the office of President of the United States, and will, to the best of his ability, preserve, protect, and defend the Constitution of the United States." The State officers swear that they will support the Constitution of the United States, and the constitution of their own State, and faithfully discharge the duties of their office according to the best of their ability.

2. The king or queen of England swears to govern the people of the kingdom of England, and the dominions thereto belonging, according to the statutes of parliament agreed on, and the laws and customs of the same; that he will cause law and justice in mercy to be executed in all his judgments; that he will, to the utmost of his power, maintain the laws of God, the true profession of the gospel, and the Protestant reformed religion established by the law; and that he will preserve unto the bishops and clergy of the realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them. The oath of the king binds him—1. To rule according to law; 2. To execute judgment in mercy; 3. To maintain the established religion.

3. The president is commander-in-chief of the army

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1. What are all State and national officers required to do before entering upon the duties of their office? What oath does the president take? What oath do governors take?

2. What oath does the king take? To what three acts does the oath of the king bind him?

and navy of the United States. Governors are declared, in the State constitutions, to be commanders-in-chief of the military and naval forces of the State. The king is the generalissimo, or first in command, of the army and navy of the kingdom. He is regarded as the fountain of justice, and general conservator of the peace of the kingdom. He establishes courts and appoints the judges thereof, who hold their office during good behavior. All proceedings of the courts are conducted in the name of the king.

4. The United States judges are appointed by the president, and confirmed by the Senate. They hold their office during good behavior. United States courts are established and regulated by Congress. State courts are established and regulated by State legislatures. In most cases the State judges are elected by the people. In some States they are appointed by the governor, and confirmed by the Senate. Their term of office is generally limited to a definite number of years. The proceedings of the courts generally run in the name of the people of the State.

5. "In every monarchical government," says Sir William Blackstone, "it is necessary to distinguish the prince from his subjects, not only by the outward pomp and decoration of majesty, but also by ascribing to him certain qualities as inherent in his royal character distinct from and superior to those of any other individual in the na-

3. What position does the president hold in the army and navy of the United States? What military position do the governors hold by the State constitutions? What position does the king hold in the army and navy? How is he regarded in the administration of justice? What does he establish and appoint? How long do judges appointed by the king hold their office? In what name are the proceedings of the courts conducted?

4. In the United States government, how are the judges appointed? For what time? By whom are United States Courts established? By whom are the State courts established and regulated? How are the State judges appointed? For what time? In whose name are the proceedings of the courts conducted?

5. What does Sir William Blackstone say is necessary in every mon-

tion. The philosophical mind considers the royal person merely as one man appointed by mutual consent to preside over many others. But the mass of mankind would become insolent and refractory, if they were taught to consider their prince as a man of no greater perfection than themselves. *The law, therefore, ascribes to the king in his high political character, certain attributes of a great and transcendent nature, by which the people are led to consider him in the light of a SUPERIOR BEING; and to pay him that AWFUL RESPECT which may enable him, with greater ease, to carry on the business of government.* The first of these attributes is sovereignty. The king's person is sacred, and no power on earth can try him in a criminal way, much less condemn and punish him." Bracton says: "The king is the minister of God on earth; that *every power is under him, and he is under no one but God.* It is a maxim of law that *the king can do no wrong. The law ascribes to the king absolute perfection. The king is not only incapable of doing wrong, but even of thinking wrong.* He can never mean to do an improper act. *In him is no folly or weakness.* The law also ascribes to him absolute immortality. THE KING NEVER DIES. Henry, Edward, George may die, but the king survives them all."

6. The people of the United States have adopted the philosophic view. They regard their officers of government only as servants or agents authorized to perform certain duties, according to the laws of the State and

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archical government? How does the philosophical mind view the royal person? What instruction would render the mass of mankind insolent and refractory? What does the law, therefore, ascribe to the king? How are the people led to consider the king? What do they pay him? What is the first of these attributes? How is the king's person regarded? Can he be tried and punished for any offence? What does Bracton say of the king? What power is under him? What power is he under? What does the law ascribe to the king? Of what is the king incapable? What does the law ascribe to him? Does the king die?

6. What view have the people of the United States adopted? How do they regard their officers of government? How are the great mass

nation. The great mass of the American citizens are taught to consider them as men of no greater perfection than themselves. They are not regarded in the light of superior beings, nor is there any theory of law to inspire that "*awful respect*." Presidents can do wrong; governors can do wrong; magistrates can do wrong. They are held accountable to the people for all their acts.

7. The king has power to make treaties; to send and receive ambassadors; to make peace and declare war; to grant letters of marque and reprisal. These powers belong to the national government in the United States, and the States have no authority in these matters.

The king is the fountain of honor; and honor and office are regarded as inseparable. In the United States, the people are the fountain of office; and all titles of honor are abolished.

The king is the arbiter of commerce, in—1. Regulating trade; 2. Regulating weights and measures; 3. Coining money. These powers, in the United States, are vested in Congress. They are uniform throughout the government. Most nations have regulated their standard of measures of length by comparison with parts of the human body. Henry I. commanded that the yard should be made of the exact length of his own arm; and this became the standard of measure of length. The other measures were obtained by multiplying or dividing the standard yard. Gold and silver alone are a legal tender in England. The same law prevailed in the United States previous to the rebellion.

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of the American people taught to consider them? Are they regarded as superior beings? Is there any theory of law to inspire that "*awful respect*?" To whom are all the officers of government held responsible?

7. What powers are mentioned as belonging to the king? In whom are these powers vested in the United States? Who is the fountain of office and honor in England? Who in the United States? In what is the king the arbiter of commerce? In whom are these powers vested in the United States? How have most nations regulated their standard of measure? What did Henry I. command? How were the other measures obtained? What is made legal tender in England? In the United States?

8. The king is the supreme head of the Church in England. King James I. declared, "that as it is atheism and blasphemy to dispute what the Deity may do, so it is presumption and sedition in a subject to dispute what the king may do in the height of his power." In the State and national governments of the United States, all connection of Church and State is expressly prohibited.

9. The president can convene Congress, or the Senate alone, on extraordinary occasions. The governors of the several States can convene the State legislatures; and the king has the same power in reference to parliament. The vice-president, when acting as president, possesses all the powers of the president; and the lieutenant-governors, when acting as governors, possess all the powers of the governors. The secretaries of state have the care of all books and papers deposited in their office. Comptrollers and treasurers, or secretaries of the treasury, superintend the fiscal concerns of the State and nation, and manage the same in the manner required by law. The treasurer receives all moneys paid into the treasury. The attorney-general prosecutes and defends all civil suits in which the State or nation are a party.

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8. What position does the king hold in the Church? What did King James I. declare? Is there any connection between Church and State in the State and national governments of the United States?

9. When may the president call an extra session of Congress or of the Senate? What powers in this respect have the governors of States? What power has the king? What powers belong to the vice-president when he acts as president? What powers belong to lieutenant-governors when they act as governors? Of what does the secretary of state have the care? What do comptrollers and treasurers, or secretaries of the treasury, superintend? What does the treasurer receive? What suits does the attorney general prosecute and defend?

## CHAPTER XXXIX.

## COUNTY AND TOWN OFFICERS.

1. WE have already seen that the States are divided into counties, and that the counties are divided into towns. Each county is a body corporate, and each town is a body corporate. In their corporate capacity they may sue and be sued; purchase and hold real or personal property for corporation purposes; and use or dispose of corporate property in such manner as may be deemed conducive to the interests of its inhabitants. Towns hold town meetings, and select their town officers. County officers are also elected,—such as county treasurer, county clerk, sheriff, and district attorney. The county treasurer receives all moneys belonging to the county, and applies the same in a manner prescribed by law. The county clerk has the custody of the books and records of the county. The district attorney prosecutes, on behalf of the people, all criminal suits.

2. The sheriffs of counties are invested with great powers. In England, three names are presented to the king by the judges, and the king selects one of the three, whom he appoints sheriff for four years. As keeper of the king's peace, he is the first man in the county, and superior in rank to any nobleman therein. 1. He may apprehend, and commit to prison, all persons who break the peace, or attempt to break it, and may bind any one in a recognizance to keep the peace. 2. He is bound, by

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1. How are States divided? What is each county and town? In their corporate capacity, what may they do? For what purpose do towns hold town meetings? What county officers are elected? What does the county treasurer receive? Of what has the county clerk the custody? What is the business of district attorneys?

2. How are sheriffs selected in England? For what time? As keeper of the king's peace, what is their rank? Whom may he apprehend and

virtue of his office, to pursue and take all traitors, murderers, felons, and other criminals, and commit them to jail for safe custody. 3. He is bound to defend his county against any of the king's enemies; and for this purpose, as well as for keeping the peace and pursuing felons, he may command all the people of his county to attend him; and every person over fifteen years of age, and under the degree of a peer, is bound to obey under pain of fine and imprisonment. The sheriff executes all process issued to him from the courts. When an action is brought on for trial, he summons the jury. When the action has been tried, he carries into execution the judgment of the court. His duties in criminal actions are: 1. To arrest; 2. To commit to prison; 3. To summon a jury; 4. To execute the sentence of the court. The sheriff's deputies may perform nearly all the duties of the sheriff. Most of these duties are exercised by sheriffs in the several counties of the several States.

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## CHAPTER XL.

### MARRIAGE.

1. THE institution of marriage may be regarded as the foundation of civil society. Families begin with marriage; and hence arise the various relations of husband, wife, father, mother, children, brothers, sisters, and all the

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commit to prison? What is he bound to do by virtue of his office? Against whom is he bound to defend his county? For this purpose, whom may he command to attend him? What is the penalty for disobedience? What process does the sheriff execute? When an action is brought to trial, who summons the jury? Who carries the judgment into execution? What are his duties in criminal actions? What duties may be performed by his deputies? Where, except in England, are most of these duties performed by sheriffs?

1. How may the institution of marriage be regarded? With what do families begin? What relations arise from marriage? What is the

other degrees of kindred. Parental solicitude for the welfare of children, and the constant exercise of paternal advice and restraint, has greater influence in protecting the morals and securing the happiness of society, than all civil authority.

2. Marriage, in England and in the American States, is declared to be a civil contract. The law treats it as it treats all other civil contracts, allowing it to be good and valid in all cases where the parties, at the time of making it, were competent, willing, and actually made such contract. The impediments to marriage by the Roman civil law were: Non-consent of parents; want of age; want of citizenship; natural defects of mind or body; consanguinity; affinity. The general rule for prohibition on account of consanguinity and affinity was: "All such as are real parents and children to each other, or in the place of parents and children, are forbidden to marry together." In the right line of parents and children, marriage was prohibited *ad infinitum*, whether the relation of parent and child was derived from nature, or introduced by adoption. Marriage in the right line was forbidden on account of affinity, no less than consanguinity. This provision extended equally to freemen and to slaves. The statutes of New York declare that all marriages between parents and children, including grand-parents and grand-children of every degree, ascending and descending, and between brothers and sisters of the half-blood, as well as of the whole blood, are incestuous, and absolutely void. These are the only prohibitions on account of consanguinity and affinity. The Code Napoleon has adopted precisely the same extent of prohibition, as

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effect of parental solicitude for the welfare of children, and the constant exercise of paternal advice and restraint?

2. Where is marriage declared to be a civil contract only? How does the law treat it? When is it valid? What were the impediments to marriage by the Roman civil law? What was the general rule for prohibition on account of consanguinity and affinity? To what extent prohibited in the right line? What do the statutes of the State of New York declare as to the prohibition of marriage on account of consanguin-



forming the impassable line between lawful and incestuous marriages. In the twenty-second century of the history of the world, marriage between brothers and sisters of the half-blood was not prohibited. Abraham, the patriarch and founder of the Jewish nation, married his sister of the half-blood, as appears from the twelfth verse of the twentieth chapter of Genesis. When the Levitical law was given, these marriages were prohibited.

3. In most of the United States, marriage between uncles and nieces, and aunts and nephews, is prohibited. This is in accordance with the Levitical law. It is not prohibited in all the States, as we have seen. From the time of the Emperor Claudius to that of Constantine, the marriage of a brother's daughter was allowed. In Massachusetts, Ohio, and several other States, marriage between nearer of kin than first cousins is prohibited.

4. Persons of unsound mind are incompetent to make a marriage contract. To constitute a valid marriage, according to the laws of England, it is necessary—1. That the parties be not within the prohibited degrees of consanguinity or affinity; 2. That the male be of the age of fourteen, and the female of the age of twelve, with the consent of parents or guardians; 3. Of the age of twenty-one years, without the consent of parents or guardians; 4. That the parties be of sound mind; 5. That the parties be single; 6. That they consent to the marriage; 7. That the marriage be celebrated in pursuance of the publication of bans or license; 8. That the marriage be celebrated by one authorized to celebrate the same. **Marriages**

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ity? What marriages are forbidden on account of consanguinity by the Code Napoleon? What relative did Abraham marry? By what law of the Jews was such marriages prohibited?

3. What marriages are prohibited by the Levitical law? What is the rule in most of the States of the Union? Are marriages of uncles and nieces prohibited in all the States? For what time were such marriages allowed by the Roman government? What is the rule of marriage as to consanguinity in Massachusetts?

4. What is the rule as to persons of unsound mind? To constitute a valid marriage according to the laws of England, what is necessary? Within what degree of consanguinity is marriage prohibited in Eng-

within the fourth degree of kindred are prohibited in England. In calculating degrees of kindred, they begin at the degree in which one stands from the common ancestor of both, and count back to the common ancestor, reckoning one for each degree. They then descend on the other line, counting one for each degree, until they arrive at the degree of the second party. Brothers and sisters stand in the second degree of kindred. Uncles and nieces, and aunts and nephews, stand in the third degree. Cousins stand in the fourth degree of kindred, and are allowed to marry in England.

5. No marriage is valid without the free and voluntary consent of the parties. A marriage procured by force or fraud is void. It is proper, in case such marriage occurs, that it should be declared null and void by a court having competent jurisdiction; as also in the case of the marriage of persons of unsound mind. By the common law of England, males of fourteen years of age, and females of twelve years of age, were capable of entering into a valid marriage contract, with the consent of parents or guardians. Marriage before that age is voidable, at the election of either party, on arriving at the age of consent. In Massachusetts, males under twenty-one years of age, and females under eighteen years of age, are not allowed to marry without the consent of their parents or guardians. Consent of parents or guardians was required at all ages by the Roman civil law, unless the children had been emancipated, or were out of the parent's power; and if such consent from the father were wanting, the marriage was void.

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land? How are degrees of kindred calculated? In what degree do brothers and sisters stand? In what degree do aunts and nephews stand? In what degree do cousins stand?

5. What is the effect, if the marriage be procured by force or fraud? What is proper in such case? What is the legal age of consent by the common law of England? Is a marriage before that age binding? What is the rule as to the age of consent in Massachusetts? What was the rule as to the consent of parents or guardians by the Roman civil law?

6. All the States have prohibited second marriages during the lifetime of the former husband or wife, unless the marriage of such former husband or wife shall have been annulled or dissolved for some cause other than the wrong act of the party wishing to marry, or unless such former husband or wife shall have been sentenced to imprisonment for life. The second marriage is void, and in most cases punished by imprisonment in the state-prison. In New York, if the husband or wife absent himself or herself for the space of five successive years, without being known to the other to be living during that time, and the other shall marry, the marriage will be void only from the time its nullity shall be pronounced by the court, and there is no penalty for such marriage. Polygamy was formerly allowed among the Jews, and is now allowed among the Mohammedans and Mormons.

7. The mode of celebrating a marriage differs very materially in the different States. In some of the States, it is required that all persons intending to be joined in marriage shall cause a notice of their intentions to be entered in the clerk's office of the town where each may respectively dwell, at least fourteen days before their marriage. The clerk is required to publish such notice, either by posting in some public place in the town, fourteen days at least before the marriage or by making a public proclamation thereof at three public religious meetings in the town, not less than three days distance from each other. A certificate of publication is to be delivered by the clerk to the parties, which is to be delivered to the minister or magistrate, in whose presence

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6. What is the law in the several States as to second marriages? What is the penalty for bigamy or polygamy? At what time after the disappearance of husband or wife, without being known to be living, may the other marry without incurring the penalty? Where was polygamy formerly allowed? Where is it now allowed?

7. Is there a uniform mode of celebrating marriage in the several States? What notice are persons intending to be joined in marriage required to have entered with the town clerk? What notice does the clerk give? What is to be delivered by the clerk to the parties? To

the marriage is to be celebrated, before he proceeds to solemnize the same. After the notice of intentions of marriage is entered with the clerk, if any person shall forbid the bans, and shall assign his reasons therefor in writing, and leave the same with the clerk, the clerk shall withhold the certificate, and submit the objections to the justices of the peace. The justices give notice to the persons who propose to be married, and, after a full hearing, the justices decide upon the objections, and certify their decision to the clerk. If the objections are sufficient, the clerk withholds the certificate of publication of bans. But if the objections are unproved or insufficient, the clerk issues his certificate. If the decision is against the parties, they may appeal to the Court of Common Pleas, or to the Supreme Court, and their decision is final. A marriage may be solemnized by any magistrate within his jurisdiction, or minister of the gospel within his State. Heavy penalties are imposed for solemnizing any marriage without the certificate of the clerk, or for any person not authorized to solemnize a marriage. In many of the States, no publication of the bans is required.

8. In a criminal action for bigamy, actual proof of marriage is required ; but in other cases, proof of marriage by the declaration of the parties, or continued cohabitation, or general reputation, is sufficient.

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whom are the parties to deliver the certificate ? If any person shall forbid the bans, and file his objections with the clerk, what action will the clerk take ? What action do the justices then take ? To whom do they return their decision ? If the justices certify that the objections are valid and sufficient, what action does the clerk take ? If they certify that they are invalid or unproved, what action does he take ? If the decision be against the parties, to what court may they appeal ? By whom may marriages be solemnized ? For what are heavy penalties imposed in some of the States ? Is publication of bans required in all the States ?

8. In a criminal action for bigamy, what proof of marriage is required ? In other cases, what proof will be sufficient ?

## CHAPTER XLI.

## EFFECT OF MARRIAGE UPON THE PROPERTY OF THE PARTIES.

1. IN reference to the effect produced by marriage upon the property of the parties, nearly all the States were governed by the common law of England until within a very few years. Most of the States are still governed by that law. The statute law repeals all the provisions of the common law which conflict with the statute. By the statute law of New York, passed in 1860, concerning "the rights and liabilities of husband and wife," it is enacted that the property, both real and personal, which any married woman owns as her sole and separate property, or which may come to her by descent, devise, bequest, gift, or grant; that which she acquires by her services, or business carried on for her separate account; that which a woman married in this State owns at the time of her marriage, with the rents, issues, and profits thereof, shall, notwithstanding her marriage, remain her sole and separate property, and may be used and invested in her own name, without any control of her husband, or liability for his debts, except those contracted for the support of herself and her children. She may sell, assign, and transfer her separate personal property, and carry on any business on her separate account; and her earnings are her sole and separate property, and may be invested in her own

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1. By what law were the States formerly governed in reference to the effect produced by marriage upon the property of the parties? By what law are most of the States still governed? What effect does the statute law have upon the common law? What law was passed in New York in 1860? What property by that law remains the sole and separate property of the wife, notwithstanding her marriage? Is it liable for any of the husband's debts? What may she do with her separate personal

name. She may also sell and convey her real property in the same manner as if she were unmarried. She may sue and be sued in all matters relating to her separate property in her own name, and her contracts respecting the same do not affect or bind her husband.

2. By the common law, the husband by marriage acquires an absolute title to all the personal property of the wife which she has in her possession at the time of the marriage. This property, by the marriage, becomes his property, as completely as that which he has purchased with his money. In case of the death of the husband, this property goes to his executors or administrators. The husband is liable to pay all the debts of the wife contracted before marriage. The husband's liability to pay the debts of the wife does not depend alone upon the fact that he has received property from her. She is not only deprived of the disposal of her property, but she can acquire none by her services. The husband has the right to take possession of all the personal property of the wife known as *choses in action*. *Chose* is a French word, signifying *thing*. A *chose in action* is a right to recover a debt or damages which cannot be enforced without an action, as bonds, notes, contracts, damages. The husband may sue for and collect these choses in action, or dispose of them at pleasure. When collected, the avails are his absolutely, although they remain in the hands of his attorney. The husband may assign the choses in action of his wife, and the assignment will be valid, if made for a valuable consideration; but he cannot devise them by his last will and testament. If the husband die before

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property? Can she sell her real estate? In what name may she be sued in reference to her own property? Do her contracts in reference to her private property affect or bind her husband under that statute?

3. By the common law, what effect is produced by marriage upon the personal property of the wife which she has in her possession? What debts of the wife is the husband bound to pay? Upon what does his liability to pay her debts depend? What right has the husband in her choses in action? What does the word *chose* signify? What is a chose in action? What may the husband do with the choses in action belong-

the choses in action are collected or assigned, they belong to the wife.

3. If the husband survive the wife, he is the lawful administrator of the wife, and in that capacity may collect her choses in action and pay her debts; and if there is a surplus, it belongs to him. The husband and wife may or may not be *of kin*. Of kin, means related by blood. By marriage, the husband becomes entitled to dispose of his wife's *chattels real*. The word *chattels* is generally applied to personal property. Chattels real are such personal property as issues out of some real property, as leases of lands. They may be taken by execution for his debts. At her death, they belong to him absolutely. The husband also acquires by marriage the right to receive all the rents, issues, and profits of all lands and tenements which the wife has in fee-simple or for life during the coverture. This is a freehold estate in the husband. The title to the lands remains in the wife. On the death of the wife, during the life of the husband, the real estate of the wife descends to her heirs. The husband's interest therein ceases at her death, unless he had by his wife a child, born alive, which could have inherited the estate if it had been alive at the death of its mother. In such case, the husband is entitled to a freehold estate in such property during his life. This is called *courtesy*.

4. Upon the death of the husband without leaving a

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ing to his wife? Can he devise them by last will and testament? If the husband die before the choses in action are collected or assigned?

8. Who is the lawful administrator of the wife in case of her death? If the husband, in the capacity of administrator, collects the choses in action of his deceased wife, what is to be done with the proceeds? Are the husband and wife necessarily *of kin*? What do the words *of kin* signify? What effect is produced upon the chattels real of the wife by marriage? To what is the word *chattel* generally applied? What are chattels real? Can they be taken in execution for the debts of the husband? What becomes of them at her death? What right does the husband acquire in the lands and tenements which the wife has in fee-simple or for life? In whom is the title? At the death of the wife, during the lifetime of the husband, what becomes of her real estate? When does the husband's interest in the rents, issues, and profits cease? To what estate is the husband entitled by courtesy?

valid will, the wife is entitled to an estate for life of one-third part of the real estate of which the husband was seized during coverture. She is entitled to one-third of his personal property which remains after paying his debts, if he left descendants; and to one-half if he left no descendants. The husband may bequeath all his personal estate; in which case the widow will receive nothing but her dower in the real estate. There is a species of personal property which the husband cannot bequeath. This is called her paraphernalia. This is of two kinds. The first consists of her beds and bedding, and clothing suitable to her condition in life. The second consists of her ornaments, such as jewels, bracelets, watch, laces, and the like. None of this paraphernalia can be bequeathed. The first class cannot be applied to the payment of debts. The husband may take the second class from his wife, and dispose of them during the coverture. On his death, they vest in the wife, unless there shall not be sufficient personal property to pay the debts. They can never be taken from the wife to pay legacies. The husband cannot deprive the wife of the right of dower by will, or by any conveyance, unless she join with him in the conveyance.

5. If the husband, by will, give property to his wife in lieu of dower, she is at liberty to elect such property or to demand her dower. Such legacy should be clearly expressed to be in lieu of dower, or the widow may be entitled to both legacy and dower. The rule of the common law is, that the widow shall be endowed with a life estate in one-third part of all the estate of inheritance of

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4. Upon the death of the husband without a valid will, to what estate is the wife entitled in the real property of her deceased husband? To what part of the personal property is she entitled? Can the husband bequeath all his personal property? Is there any personal property which the husband cannot bequeath? What is this called? Of what two kinds does it consist? Can the first class be applied to the payment of the deceased husband's debts? Can the second class be so applied? Can the husband deprive the wife of the right of dower?

5. If the husband, by will, give property to his wife in lieu of dower,



which her husband was seized during the coverture. Let us suppose that A. owns a farm of one hundred and thirty-five acres, which he sells to B., and B. sells the same farm to C., and C. sells the same to D. Neither of the wives of A., B., or C. join in the deed. A., B., and C. die. To what portion of the estate is each of the widows of A., B., and C. entitled? The widow of A. would clearly be endowed of one-third of the farm, which would be forty-five acres; but B.'s widow is not to be endowed of one-third of the whole farm, for B. was never seized of the one-third of which A.'s widow was endowed; but she is to be endowed of one-third of what remained (ninety acres) after deducting the dower of A.'s widow, which would be thirty acres. The same principle applies to the dower of C.'s widow.

6. If personal property be given to the wife, and there is nothing to indicate the intention of the donor that it shall be applied to her separate use, by the common law, it goes absolutely to the husband. If a legacy should be given to the wife, and the husband should die before it is paid, it would go to the husband's executors.

7. The husband is not only liable to pay the debts contracted by the wife before marriage, but he is also liable for her torts committed before marriage. The husband is liable for the torts of the wife committed after marriage. If they are committed by his order, or in his presence, he alone is liable. The law presumes that the tort was committed by his coercion. If the tort be committed in his

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what are her rights? Of what is the widow endowed at common law? If A. own a farm of one hundred and thirty-five acres, and sell the same to B., and B. sell the same to C., and C. sell the same to D., and neither of the wives of A., B., nor C. convey her right of dower, and A., B., and C. die, what is the estate in dower of the widows of A., B., and C., and what is the estate of D.?

6. If personal property be given to the wife by will or otherwise, and there is nothing to indicate the intention of the donor that it shall be applied to her separate use, to whom does it go? If a legacy be given to the wife, and the husband die before it is paid?

7. For what torts of the wife is the husband liable? If committed by his order or in his presence? If committed in his absence?

absence, both are liable, and the wife must be joined in an action against the husband.

8. The wife is in many cases exempt from punishment for offences against the law, if she committed these offences by the coercion of her husband. If committed in his presence, or if he approved or encouraged her, coercion is presumed. This presumption may, however, be rebutted by the husband, and he may show that the offence was committed against his will.

9. The husband is bound by such contracts of the wife as she has been accustomed to make, and he has been accustomed to ratify. His subsequent ratification of her contracts of that nature furnishes sufficient evidence that he had empowered her to make such contracts. He is bound by such contracts of his wife as, according to the usage of the country, wives are accustomed to make. If the wife purchase at a store such articles as wives of her rank in life are accustomed to purchase, the husband is bound to pay for them. The husband is bound by the contract of his wife for any article purchased by her which came to his use, and of which he voluntarily receives the benefit. He is bound by her contracts for necessities for herself, even when he refuses to provide them. If the husband should turn the wife out of doors, and forbid all persons to supply her with necessities, he would be bound by her contracts for such necessities.

10. The husband must supply his wife with necessities according to her rank in life. The husband may prohibit a particular person from trusting his wife; but if his pro-

8. In what cases is the wife exempt from punishment for offences against the law?

9. By what contracts of the wife is the husband bound? What furnishes the evidence that he had empowered her to make such contracts? What effect has the general usage of the country upon the contracts of the wife? If the wife purchase at a store such articles as wives of her rank in life are accustomed to purchase? If the articles purchased come to the use of the husband? If she purchase necessary articles? If the husband should turn her out of doors, and forbid all persons to supply her with necessities?

10. According to what must he supply her with necessities? May the

hibitions should become so extensive as to render it difficult for her to procure necessaries, such prohibition would be of no avail. All debts due from husband to wife which may become payable during coverture are, at common law, annulled. It is a rule of the common law, that the husband and wife cannot contract with each other during coverture. The husband cannot convey real property to his wife by deed; yet he can convey it to a third party, and that third party can immediately convey the property to the wife, and such a conveyance would be valid. When the wife possesses property which cannot belong to her husband, on her decease she may devise it by last will and testament, unless prohibited by the statutes of her particular State. There is a provision in the statutes of the State of New York which declares that a will is revoked by a subsequent marriage.

11. The wife, in respect to her separate property, may sue her husband. If a husband lend money, and take a mortgage to himself and wife, on his death the mortgage belongs to his wife, and she is entitled to the money due thereon. In case of a conveyance to husband and wife, the survivor takes the whole. It is a general rule that the husband cannot be a witness for or against his wife, and the wife cannot be a witness for or against her husband. To this general rule there are exceptions. In criminal prosecutions, when the crime complained of was committed by one against the other, the injured party may be a witness against the other party. In criminal

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husband forbid persons from trusting his wife? What effect is produced by marriage on the debts due to the husband from the wife? Can the husband and wife contract with each other? Can the husband convey real property directly to his wife? When may the wife make a will? What effect is produced by marriage on a will previously made?

11. Can the wife sue the husband? If the husband loan money, and take a mortgage to himself and wife, and die before it is paid? If a conveyance be made to husband and wife? What is the general rule as to husband and wife testifying as witnesses for or against each other? Are there any exceptions to this rule? If one be charged with a crime committed upon the other? If one of them be charged with treason? If the marriage was procured by force?

prosecutions for treason they may be witnesses for or against each other. In case of a forcible marriage, the wife may be a witness against the husband, for such marriage is void.

12. The husband may do any act in defence of the wife which the wife could do in her own defence. So may the wife do any thing in defence of her husband which her husband could do in his own defence. When an attempt is made forcibly to ravish a woman, she may kill the ravisher in defence of her chastity. Her husband has the same right, and in both it is justifiable homicide. When a man finds another in the act of adultery with his wife, he is not justified if he kill him.

13. All well-regulated governments require the contract between the sexes to marry to be duly celebrated; and until there has been a celebration of the marriage, there is not, in point of law, a husband possessed of any marital rights, or a wife who is entitled to the privileges of a wife. It is a mere civil contract, to be celebrated in such manner as the Legislature shall direct. By the provisions of the common law, marriage, although celebrated by a person not qualified by law, or in a manner forbidden by law, is valid. The conduct of the person celebrating the marriage has rendered him liable to the penalties of the law; but this is not a good reason for impeaching the validity of the marriage. The provisions of the common law are in force, unless altered by the statute law of the State in which the parties reside.

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12. What may the husband do in defence of his wife, and the wife in defence of her husband?

13. What do all well-regulated governments require? What does not exist until there has been a celebration of the marriage? How is it to be celebrated? What is the effect if it be celebrated by a person not authorized, or in a manner forbidden by law? To what is such person liable? Is this any reason for impeaching the validity of the marriage? Where are these provisions of the common law in force?

## CHAPTER XLII.

## INFANTS.

1. ALL persons under the age of twenty-one years are infants. The sex, at common law, makes no difference. A woman is, therefore, an infant until she has attained the age of twenty-one years. It is the duty of the parents to support their infant children. This duty is founded on the law of nature. Whoever has been the instrument of giving life to a being incapable of supporting itself, is bound to support such being during such incapacity. When such incapacity ceases, the obligation is at an end. To prevent uncertainty on this subject, the law has fixed the time of infancy or minority. It is, then, the absolute duty of the parent to maintain his child until he is twenty-one years of age. During the period of infancy, the parent can never discharge himself from his obligation to support the child, by showing that the child was able to support himself; but he may be discharged by showing his own inability to support the child. If the child is unable to maintain himself at the age of twenty-one and upwards, the parent is still liable for his support; but the parent may discharge himself from all liability by showing that such child is able to support himself.

2. It is also the duty of children to support their parents, if they are unable to support themselves. All chil-

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1. Who are infants? What is the duty of parents to their infant children? Upon what is this duty founded? How long are they bound to support their children? When their incapacity ceases? At what age does infancy cease? How can the parent discharge himself from his obligation to support his infant child? If the child is unable to support himself at the age of twenty-one and upwards? How may the parent discharge himself from all liability after the child is twenty-one?

2. When is it the duty of children to support their parents? When a man marries a wife having children, what obligations does he assume?

dren, both male and female, are bound to support their parents if they have the ability. When a man marries a wife having children, the husband takes upon him during coverture the obligations belonging to the wife. If she were able to maintain her children when he married her, he is bound to maintain them; but if she were not able, he is not bound.

3. The parent has a right to govern his minor child, and to correct him. The exercise of this power must, in a great measure, be left to the discretion of the parent. The parent is bound to correct the child, so as to prevent him from becoming the victim of vicious habits. But he may chastise the child to such a degree as to render himself liable to an action. The child has rights which the law will protect. The true ground on which the question of excessive punishment rests is this: The parent should be considered as acting in a judicial capacity when he corrects his child, and should not be held liable for errors of judgment. Although the punishment should appear to a jury to be unreasonable, and exceeding the offence, yet if it should also appear that the parent acts conscientiously, and from motives of duty, no verdict ought to be found against him. But when the punishment, in their opinion, is unreasonable, and the parent acted with evil motives, the verdict should be against him. For error of judgment he ought to be excused, but for malice of heart he should not be shielded from the just claims of the child.

4. Malice may be inferred from the circumstances attending the punishment. The instrument used, the time when, the place where, the temper exhibited at the time,

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3. What control has the parent over his minor children? To what must this power in a great measure be left? Why is the parent bound to correct the child? Can the parent chastise the child so severely as to render himself liable to an action? In what capacity should the parent be considered as acting in correcting his child? In an action against the parent for excessive punishment, when should the verdict of the jury be for the parent, and when against him? For what should he be excused? For what should he not be shielded?

4. From what may malice be inferred? What may be proved to show

may be proved, to show the motives which influenced the parent. These rules are equally applicable to the cases of school teachers, or to any one acting in the place of a parent.

5. Infants are not generally bound by their contracts. They are, however, in many instances, bound by their contracts for necessities. The articles deemed necessities are—food, necessary clothing, washing, medical attendance, and instruction. An infant is not bound by his contract for these articles, unless they are necessary for him in his peculiar circumstances, and cannot be furnished by his parent or guardian. When an infant lives with his parent, master, or guardian, and their care and protection is duly exercised, the infant is not bound by his contract for necessities. If the infant is beyond their protection, or it is not duly exercised, he is bound by such contract. If the infant lives with his parent, or lives abroad, and his parent supplies him with necessities, he is not bound by any contract he makes.

6. If the infant be beyond the care and protection of the parent, or if that care and protection be withheld, as where the infant is not properly clothed to protect him from the inclemency of the weather, or is not allowed sufficient food, or the food is of a bad quality, and these articles are furnished, the infant is bound to pay for them, or the parent may be compelled to pay for them. It was the duty of the parent to furnish such articles for his child; and if he did not, and they were furnished by another, the parent received the benefit. The articles fur-

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the motives which influenced the parent? To what other persons are these rules applicable?

5. Are infants generally bound on their contracts? On what contracts are they in many instances bound? What articles are deemed necessities? When is he not bound on his contracts for these articles? When is he bound? When is the infant not bound by any contract he makes?

6. When may the infant or the parent be compelled to pay for necessities furnished to the infant? What was the duty of the parent? If provided by another, who received the benefit? To whose use, in view of the law, are these articles furnished? What does the law imply?

nished to the infant, in view of the law, came to the parent's use, and the law implies a promise from the parent to pay for the same.

7. The infant is bound only for the value of the articles to him, and not to the extent of his contract. If an infant purchase cloth, proper for him in all respects, the ordinary price of which is two dollars, and agree to give three for it, he will be liable only for the ordinary price. If the infant purchase clothing improper for his rank in society, and agree to pay no more than the actual value, he would be bound to pay no more than for clothing suitable for him. An infant is not bound for borrowed money, unless it is actually expended in necessities. The infant is not bound by any contract, the consideration of which cannot, by the rules of law, be inquired into, even when given for necessities. The infant is not bound by his contract for any other necessities than those heretofore mentioned. If the infant be a farmer, and he should purchase a yoke of oxen, although necessary to carry on his farm, yet he would not be bound by such contract. If a male infant marry, he is liable for necessities for his wife and his children. He is also, at common law, liable for the debts of his wife which existed at the time of marriage.

8. An infant may make a valid marriage contract at such age as may be fixed by statute. If the common law is to govern, a male infant at fourteen and a female at twelve may make such contract. An infant may make a will of personal property at such age as may be fixed by

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7. To what extent is the infant bound for articles furnished to him? If the infant agree to pay three dollars per yard for cloth suitable for him in all respects, the ordinary price of which is only two dollars, for what price will he be liable? If the infant purchase clothing improper for his rank, and agree to pay no more than the actual value, what only would he be bound to pay? When is an infant bound on his contract for borrowed money? On what contracts for necessities is the infant not bound? For what necessities only is the infant bound? If the infant be a farmer, and purchase a yoke of oxen? If a male infant marry, for what is he liable?

8. When may an infant make a valid marriage contract? What is the time fixed by common law? When may an infant make a will of



statute. If the civil law governs, at seventeen they may make a will of personal property. An infant, being a joint tenant, may make partition. An infant mortgagee may satisfy a mortgage, upon its being paid. An infant may set off the widow's dower. An infant trustee may give a discharge for money paid. At common law, a female may be betrothed or given in marriage at the age of seven. At nine, she is entitled to dower. At twelve, she may consent or disagree to marriage. At seventeen, she may act as executrix. At twelve, she may elect a guardian. If an infant make a will at the age prescribed by statute, and in his will direct that his debts for other things than necessities shall be paid, his executor is a trustee for the payment of such debts. These debts so directed to be paid are considered as legacies to his creditors.

9. If an infant make a contract, and promise to fulfil it after he arrives at full age, he is bound by his promise. A suit is brought against him on the original contract, and if he put in a plea of infancy, the force of this plea is avoided by setting up the new promise. If the original contract were void, no new promise will render it valid. The lawful contracts of infants are voidable, but not absolutely void. No person but the infant himself can take advantage of the privileges of his infancy. If the infant after he becomes of age promise to pay one-half of the debt, he is bound only to the extent of his promise. In contracts between infants and adults, if the contract be void, neither party is bound by it, but if it be voidable

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personal property? What is the time fixed, if the civil law governs? If the infant be a joint tenant? If he be a mortgagee? If a widow is entitled to dower out of his estate? If he be a trustee? At what age at common law may a female be betrothed? At what age is she entitled to dower? At what age may she dissent or consent to marriage? At what age may she select a guardian? At what age may she act as executrix? If an infant make a will, and direct that his debts shall be paid? How are these debts considered?

9. If an infant make a new promise to pay a debt after he arrives at full age? How is the suit brought on such a contract? If the original contract were void? Are the lawful contracts of infants absolutely void? Who only can take advantage of the infant's privilege to avoid his contract? If the infant, after he becomes of age, promise to pay a part of

only on the part of the infant, the adult is bound by it, unless the infant choose to avoid it.

10. When infants are of such tender age that they can have no regular exercise of will, they cannot commit any crime. Infants who have not arrived at the age of seven years cannot be punished as criminals. They are presumed, in contemplation of law, to be incapable of resolving to commit crime. When they have arrived at the age of fourteen, they are presumed to be as capable of committing crimes as adults. The period between these ages is an uncertain period. The presumption is in favor of the infant, and the burden of proof rests with the prosecution. When an infant has committed a tort, he is liable in a civil action at any age. A *tort* is an injury to person or property. In such case the intention is not regarded. A person of unsound mind is as liable to make compensation for damages as a person of sound mind.

11. Children are legitimate or illegitimate. Marriage is considered by all civilized nations as the only source of legitimacy. The qualities of husband and wife must be possessed by the parents, to make the offspring legitimate. The marriage must also be lawful; for if it is void *ab initio*, as where a former marriage still exists, the children are illegitimate. Marriage and cohabitation of parents raises a conclusive presumption of legitimacy; and this presumption can only be rebutted by showing circumstances which render it impossible that the husband should

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the debt? If a contract between an infant and an adult be void? If voidable only?

10. What infants cannot commit crime? Before what age are they presumed to be incapable of committing crime? At what age are they presumed to be as capable of committing crime as adults? What period is an uncertain period? In whose favor is the presumption of law? On whom is the burden of proof to show that the infant is capable between seven and fourteen? When an infant has committed a tort? What is a *tort*? Is the intention regarded in such case? Is a person of unsound mind liable for a tort?

11. Into what two classes does the law divide children? What is the only source of legitimacy? What qualities must the parents possess to make the child legitimate? If the marriage was void *ab initio*? What raises a conclusive presumption of legitimacy? How only can this pro-

be the father, as impotency and the like. A legitimate child is one born in lawful wedlock, or within forty weeks after the marriage has been dissolved by the death of the husband. An illegitimate child is one not born in lawful wedlock, or within forty weeks after the marriage has been dissolved by the death of the husband. A child may be born in lawful wedlock and yet be illegitimate; as when the husband has been absent from his family for more than forty weeks before the birth of the child, or any other circumstance which would render it impossible for the husband to become the father. If the widow marries immediately after the death of her husband, and has a child born so that by the period of gestation it might be the child of either husband, evidence may be produced to show which of them was probably the father.

12. An illegitimate child cannot inherit, at common law. He is said to be *filius nullius*, and to have no inheritable blood. The law is the same where the father acknowledges him to be his son, or intermarries with the mother, after the birth of the child. By the statutes of New York, the illegitimate child may inherit from its mother, but not from the father; and the mother may inherit from the child, but not the father. By the civil code of Louisiana, a child born out of lawful wedlock (except he be born of incestuous or adulterous connections) may be legitimated by the subsequent marriage of the father and mother, and a legal acknowledgment of him for their child. A subsequent marriage in many of the other States legitimates the child born before marriage.

sumption be rebutted? How is a legitimate child defined? Who are illegitimate? What children born in lawful wedlock are illegitimate? If a widow marry immediately after the death of her husband, and have a child born so that, by the period of gestation, it might be the child of either husband?

12. Can an illegitimate child inherit, at common law? What is he said to be? If the father acknowledges him to be his son, or afterwards intermarries with the mother? What is the statute law on this subject in New York? What is provided in the civil code of Louisiana? What is the effect of a subsequent marriage in many of the States?

13. The infant can acquire property independent of his father in any way, except by his services. The father is entitled to the services of the infant, and to all that such child earns by his labor. He has the same right in this respect that the master has to the services of his apprentice. The father is entitled to an action for loss of services when his minor child has been enticed away, or when he has been beaten. The father is entitled to an action for loss of services when his daughter, being a minor, has been allured from virtue. The loss of services is not the rule of damages in this case. The real ground for damages is the disgrace to the family. Often when the least service is performed, the highest damages are given. It is wholly immaterial whether the daughter be a minor or not, if she live with her father. In case of a minor, it is immaterial whether she live with her father or not. If she be at school abroad, she is his servant. He has a right to her services, and can recall her when he pleases. When the father is deceased, this action may be maintained by the mother, or by any one who stands *in loco parentis*. Mothers, during coverture, exercise authority over their children, but in a legal point of view they are considered as the agents of their husbands. After the death of the husband they have authority.

14. An infant before its birth is considered, in many instances, as in being, as much so as one that is born. A child born after the death of the father is entitled to a distributive share of the father's estate, as much as one who was born before his death. When waste is being

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13. How can an infant acquire property? To what is the father entitled? If a minor child has been enticed away from home or beaten, to what is the father entitled? To what action is the father entitled if his daughter is allured from the path of virtue? What is the real ground for damages? Is it necessary that the daughter be a minor if she live with her father as his servant? In case she is a minor, is it necessary for her to live with her father to give him this right of action? If the daughter be at school? If the father is deceased, in whom is this right of action? How are mothers considered in exercising authority over their children?

14. When is an infant considered as in being? To what is a child

committed upon an estate of a child before its birth, the court of chancery will grant an injunction on a bill filed in favor of such infant.

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## CHAPTER XLIII.

### SUPPORT OF THE POOR.

1. THE father, mother, or children (if of sufficient ability) of any poor person who is unable to work to maintain himself, are obliged, at their own charge, to maintain such poor person, in most of the States. Every poor person who is unable to work to maintain himself must be maintained by the town or county in which he may be, if he have no father, mother, or children of sufficient ability to support him. If he has not gained a settlement in the county in which he has become poor or sick, he must be supported at the expense of the county.

2. The laws of England and of the several States are similar in most points in reference to gaining a settlement in any town or county. Proof of the place of birth is *prima facie* proof of settlement. All legitimate children are settled in the town or county in which their parents reside, until they get a settlement for themselves. When a woman marries a man settled in another town, her set-

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born after the death of his father entitled? If waste is committed upon an estate of a child before its birth?

1. If a poor person who is unable to work to maintain himself has a father, mother, or child of sufficient ability to support him, what are they obliged to do? If such poor person have no such father, mother, or child, by whom is he to be supported? If he has not gained a residence in any town in the county, by whom is he to be supported?

2. What laws are similar in most points in reference to gaining a settlement in any town or county? What is *prima facie* proof of settlement? Where are all legitimate children settled, until they get a settlement of their own? When a woman marries a man settled in another

tlement is changed to that of her husband. In New York, any person of full age is a resident and inhabitant of any town where he has resided one year, and the members of his family who have not gained a separate settlement are deemed settled in such town.

3. A minor may gain a settlement—1. By being married, if a female, and living for one year with her husband; in which case, the settlement of the husband determines that of the wife; 2. If a male, by being married, and residing for one year separate from the family of his father; 3. By being bound as an apprentice, and serving one year by virtue of such indentures; 4. By being hired, and actually serving for one year for wages to be paid to such minor. A woman of full age, by marrying, acquires the settlement of her husband. Until a poor person gains a settlement in his own right, his settlement is that of his father and mother. No child born while the mother is a county pauper can gain a settlement by reason of the place of his birth.

4. The following classes of persons are deemed vagrants: 1. All idle persons not having any visible means of support, who live without employment; 2. All persons wandering abroad, and lodging in beer-houses, out-houses, market-places, sheds, or barns, or in the open air, and not giving a good account of themselves; 3. All persons wandering abroad and begging, or who place themselves in the streets or other public places to beg. It is made the duty of every constable or other peace-officer, whenever required by any person, to carry such vagrant before a justice of the peace, for the purpose of examina-

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town, what becomes her settlement? How does a person of full age become a resident of any town in the State of New York? What is the residence of the members of his family?

3. In what way may a minor gain a settlement, if a female? If a male? If an apprentice? What settlement does a woman of full age acquire by marriage? What is the settlement of a person until he acquires one of his own? If a child is born while his mother is a county pauper?

4. What classes of persons are deemed vagrants? What is made the duty of every constable or other peace-officer? If the justice is satisfied

tion. If the justice is satisfied by the confession of the offender, or by competent testimony, that he is a vagrant, the justice may commit him to the almshouse or poorhouse for a period not exceeding six months, or to the house of correction or common jail not exceeding sixty days; there to be kept on bread and water only, not exceeding one-half the time for which he is committed. This law is nearly the same in each State.

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## CHAPTER XLIV.

### GUARDIANS OF INFANTS.

1. A GUARDIAN is a person appointed by law to take charge of the person and property of an infant. The infant is in this case called a *ward*. The reciprocal powers and duties of guardian and ward are the same, *pro tempore*, as that of parent and child. The guardian stands in the place of the parent. In some cases, the parent himself becomes the guardian of the child. If an estate be left to an infant, the father becomes the guardian of the infant, to take charge of the estate. He is required to render an account to the child for the profits.

2. By the statutes of the State of New York, it is provided that when an estate in lands becomes vested in an infant, the guardianship of the infant, with the rights, powers, and duties of a guardian *in socage*, shall belong—  
1. To the father of the infant; 2. If there be no father,

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by the confession of the offender, or by competent testimony, that such person is a vagrant, what action may he take?

1. Define a guardian? What is the infant in this case called? What do the reciprocal duties of guardian and ward resemble? In whose place does the guardian stand? Does the parent ever become the guardian of the child? For what purpose? To whom must he account?

2. When an estate in lands becomes vested in an infant, who becomes his guardian by the statutes of the State of New York? Between rela-

then to the mother; 3. If there be no father or mother, then to the nearest and oldest relative of full age, not being under any legal disability; 4. Between relatives of the same degree of consanguinity, males shall be preferred. All statutory provisions relative to guardians in socage are deemed to apply to such guardians. The rights and authority of every such guardian are superseded in all cases where a testamentary or other guardian shall have been appointed.

3. The father is the natural guardian of the child; and at his death, the mother. This guardianship extends only to the person of the infant, and continues till he has acquired the age of twenty-one years. A guardian in socage has the custody of the infant's property, as well as his person. This guardianship continues till the infant is fourteen years of age. The infant is then supposed to have sufficient discretion to choose his own guardian. In England, by statute, the father may dispose of the custody of his minor child by will or by deed, till such child attains the age of twenty-one years. If such guardian be appointed by the will of the father, he is called a testamentary guardian. If appointed by deed, he is called a guardian by statute. This is the law in most of the States. The guardian so appointed has the care of the ward and the management of his estate.

4. The court of chancery, or the Supreme Court possessing chancery jurisdiction, may be regarded as the guardian in chief, having control over the persons and

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tives of the same degree of consanguinity, which is preferred? What provisions are deemed to apply to such guardians?

3. Who is the natural guardian of the child? To what does this guardianship extend? What custody has the guardian in socage? To what time does this guardianship extend? What power then belongs to the infant? How may the father dispose of the guardianship of the child in England? To what age? If such guardian is appointed by the will of the father, what is he called? If appointed by deed? Is this the law in the States? What care and control does such guardian exercise?

4. What court may be regarded as guardian-in-chief of the persons and property of infants? What guardians will the court remove for



property of infants. The court will remove guardians appointed by their authority, and also statutory and testamentary guardians, whenever sufficient cause can be shown. Guardianship is a delegated trust for the benefit of the infant; and in case the guardian abuses his trust, the court will check and punish or remove him, and appoint another in his stead.

5. Guardians are required to exercise that degree of care, skill, and prudence, in managing the property of their wards, which men generally exercise in the transaction of their own affairs. A want of such care, skill, and prudence would be gross negligence, and would render the guardian personally liable for all loss of, and injury to, the property of his ward. If he employ an agent to transact any business in reference to the property of his ward, it is his duty to exercise proper care in the selection of such agent, and in compelling the agent to perform his duty. Gross negligence in this duty will render the guardian personally liable for the acts of the agent. A guardian using the money of his ward, or neglecting to invest it, is chargeable with interest. A guardian should keep his ward's property separate from his own; otherwise he will make it his own so far as to render himself accountable for it. A guardian cannot trade with himself on account of his ward, or buy or use his ward's property for his own benefit. If the guardian put his ward's property into his business, and the business is unsuccessful, all the loss will fall upon the guardian, and he will be liable to his ward for the capital and interest. If

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cause shown? What is guardianship? In case the guardian abuses this trust, what will the court do?

5. What degree of care and skill are guardians required to exercise in managing the property of their wards? What would a want of such care and skill be? To what would it render the guardian personally liable? If it is necessary to employ an agent in transacting the business of his ward, what is his duty? What will render the guardian personally liable for the acts of such agent? If the guardian use the money of his ward, or neglect to invest it? How should the guardian keep the property of his ward? Why? What are guardians prohibited from doing? If a guardian put his ward's property into business, and the

the investment of his ward's property in business should prove successful, the ward would be entitled to his capital invested, and the profits thereon. In such case, he may make his selection either to take the capital invested and the interest, or the capital invested and the profits.

6. An infant may sue and be sued; but when an infant is a party, he must appear in court by guardian *ad litem*. It is within the province of every court to appoint a guardian *ad litem* when a party in a suit is an infant. If the infant be the plaintiff, he must have a guardian *ad litem* appointed before the suit is commenced. If the infant be the defendant, he is sued in his own name alone, as any person of full age is sued; but when he appears in court to defend the suit, he must have a guardian *ad litem* appointed. He does not necessarily appear by his general guardian, if he has one; but the court may appoint any person guardian *ad litem* to defend that particular suit. If the infant be the plaintiff, the guardian *ad litem* may be appointed on his own application, if over fourteen years of age; but if under fourteen, upon the application of his guardian, or on the application of a friend of the infant, on notice to the guardian. If the infant be the defendant, a guardian *ad litem* may be appointed on similar application. If no application is made for a guardian *ad litem* by the infant, or on his behalf, within a limited time, the plaintiff may apply to the court to have one appointed. This must be done before a judgment can be taken against the infant.

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business is unsuccessful? If the business should prove successful, to what is the ward entitled? In such case, what selection may he make?

6. Can an infant be a party in an action? How must he appear in court? By whom is the guardian *ad litem* appointed? When appointed, if the infant be plaintiff? If the infant be defendant, how is he sued? What must be done when he appears in court? Does he appear by his general guardian? Whom will the court appoint? If the infant plaintiff be fourteen years of age, upon whose application will the court appoint a guardian *ad litem*? If under fourteen? If the infant be defendant, how is the guardian *ad litem* appointed? If no application is made by the infant, or on his behalf, within the time limited by law, what may the plaintiff do?

7. There is a court held in each county in the several States for the purpose of settling the estates of deceased persons. In some States, these courts are called probate courts; in others, surrogates' courts. The judge, in some States, is called judge of probate; in others, surrogate. Guardians are generally appointed by the judge of probate or the surrogate. In New York, application for the appointment of a guardian is made by the minor himself, if fourteen years of age, by petition to the surrogate of the county where the minor resides. The minor may nominate his guardian, subject to the approval of the surrogate. If the minor be under fourteen, such application may be made by a relative or other person in his behalf. Before the surrogate appoints a guardian, he requires the guardian to give a bond to the minor, with sufficient sureties, in a penalty double the amount of the personal estate, and of the value of the rents and profits of the real estate. The condition of such bond is, that he will faithfully discharge the duty of guardian to such minor according to law; and that he will render a true and just account of all moneys and other property received by him, and of the application thereof, and render an account of his guardianship to any court having jurisdiction thereof, when required.

8. It is the duty of every guardian in socage, and every general guardian, whether appointed by will or by the surrogate—1. To keep safely all the property of his ward which may come into his possession; 2. Not to suffer any

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7. For what special purpose are courts held in the several counties? What are these courts called? What are the judges of these courts called? By whom are guardians generally appointed? By whom is the application made in the State of New York, if the minor is fourteen years of age? To what surrogate is his petition presented? By whom is the guardian nominated? If the minor is under fourteen years of age, on whose application will a guardian be appointed? Before the surrogate will appoint a guardian, what will he require? In what penalty? What is the condition of such bond? To whom is he to render an account?

8. What is the duty of every guardian in socage, and every general guardian, as to the property of his ward which may come into his pos-

sale, waste, or destruction of such property; 3. To keep in repair the houses, gardens, and other appurtenances to the lands of his ward, with the issue and profits thereof, or with such other moneys of his ward as may be in his hands; 4. To deliver to his ward, when he becomes of full age, such property in as good order as when received by him, inevitable decay and injury only excepted; 5. To account to his ward for all issues and profits of such estate. Guardians are entitled to their reasonable expenses, and a rate of compensation fixed by law in the several States. In New York they are entitled to five per cent. for receiving and paying out sums of money not exceeding one thousand dollars; two and a half per cent. on sums exceeding one thousand and not exceeding five thousand; and one per cent. on all sums over five thousand dollars.

9. A guardian has the legal power to sell or dispose of the personal property of his ward in any manner he may think most conducive to the purposes of his trust; and a purchaser who deals fairly has a right to presume that the guardian acts for the benefit of his ward, and is not bound to inquire into the nature of the trust. The guardian has no power to sell the real property of his ward. The guardian is allowed half commissions for receiving, and half for paying out the trust-money.

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session? As to waste and destruction of such property? As to keeping the houses and gardens in repair? When is he to deliver such property to his ward? In what condition? For what is he to account? To what compensation are guardians entitled? At what amount fixed in New York?

9. What power has the guardian over the personal property of his ward? Over the real property?

## CHAPTER XLV.

## DISSOLUTION OF THE MARRIAGE CONTRACT.

1. WHEN a marriage contract has been duly solemnized, it becomes a perpetual obligation, and cannot be cancelled at the option of either or of both parties. It continues in force until dissolved by the death of one of the parties, or by divorce. Divorces are divided into two classes: 1. Divorce *a vinculo matrimonii* (from the chain of matrimony); 2. Divorce *a mensa et thoro* (from table and bed). The laws governing marriage and divorce are contained in the statutes of the several States, each State enacting its own laws. The causes for which a divorce *a vinculo* is granted differ in the several States. There may be causes existing at the time of the marriage, for which the court, by sentence of nullity, will declare such marriage contract void. There may be causes which have arisen since the formation of the contract, for which the court will dissolve the contract.

2. The causes which exist at the time of the marriage, for which the Supreme Court in New York will, by sentence of nullity, declare the marriage contract void, are: 1. That the parties, or one of them, had not attained the age of legal consent; 2. That the former husband or wife of one of the parties was living, and the marriage with such former husband or wife was then in force; 3. That

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1. When a marriage contract has been duly solemnized, what does it become? Can it be annulled at the choice of the parties? How may it be dissolved? Of what two classes are divorces? By what legislative body are the laws governing marriage and divorce made? Are the causes for granting a divorce *a vinculo* the same in all the States? When may causes exist for which the court will declare the marriage contract void? When may causes arise for which the court will dissolve the marriage contract?

2. What are the causes existing at the time of the marriage for which the courts will declare the marriage contract void?

One of the parties was an idiot or a lunatic; 4. That the consent of one of the parties was obtained by force or fraud; 5. That one of the parties was physically incapable of entering into the married state; 6. That the female at the time of the alleged marriage was under the age of fourteen years, and that such marriage was without the consent of her father, mother, guardian, or other person having the legal charge of her person, and was an offence on the part of her husband under the statute, and punishable according to law; 7. That the marriage was not followed by consummation or cohabitation, nor had been ratified by any mutual assent of the parties after the female had attained the age of fourteen years; 8. That the parties were within the prohibited degrees of consanguinity.

3. There may be causes which have arisen since the formation of the marriage contract, for which the court will dissolve the contract. The principal cause is the violation of the marriage contract by the commission of adultery. For more than one hundred years previous to the Revolution no divorce took place in the colony of New York. For many years after New York became an independent State there was no lawful mode of dissolving marriage, in the lifetime of the parties, but by a special act of the Legislature. As the law now stands, the Supreme Court may dissolve the marriage contract by a decree of divorce for the adultery of the husband or of the wife in three cases only: 1. Where both husband and wife were inhabitants of that State at the time of the commission of the offence; 2. Where the marriage has been solemnized within that State, and the injured party at the time of the commission of the offence, and at the time of exhibiting the bill of complaint, shall be an actual

3. What is the principal cause arising after the formation of the marriage contract for which the court will dissolve the contract? For what time previous to the Revolution were there no divorces granted in the colony of New York? After New York became an independent State, how only were marriage contracts dissolved? As the law of that State

inhabitant of that State; 3. Where the offence was committed in that State, and the injured party at the time of exhibiting the bill of complaint was an actual inhabitant of that State.

4. Although the fact of adultery be proved against the defendant, yet the court will deny a decree of divorce in the following cases: 1. Where the offence shall appear to have been committed by the procurement or with the connivance of the plaintiff; 2. Where the offence charged shall have been forgiven by the injured party, and such forgiveness be shown by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offence; 3. Where the suit shall not have been brought within five years after the discovery by the plaintiff of the offence charged; 4. Where it shall be proved that the plaintiff has also been guilty of adultery under such circumstances as would have entitled the defendant to a divorce if he were innocent of the offence charged. An action to annul a marriage on account of the want of age of the parties may be brought by the parent, guardian, or person entitled to the custody of the minor; but it cannot be annulled on the application, in New York, of the party who was of the age of legal consent when the marriage was solemnized, nor when the parties, after the age of legal consent, have freely cohabited as husband and wife.

5. In Catholic countries marriage is considered a sacrament, and held indissoluble during the life of the parties. This was formerly the case in France. By the Code Napoleon divorces were allowed without cause, founded

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now stands, in what three cases only can the courts dissolve the marriage contract?

4. In what cases will the court deny a decree of divorce, although the fact of adultery be proved against the defendant? By whom may the action to annul a marriage on account of want of age of the parties be brought? Can it be annulled in New York on the application of the party who was of the age of legal consent when the marriage was solemnized?

5. How is marriage considered in Catholic countries? What was the rule of law for granting divorces by the Code Napoleon? By what power

constitute the cause of action must be alleged in the complaint, or they cannot be proved on the trial. 5. The relief sought for must be asked in the complaint. The plaintiff either prays that the marriage between himself and defendant may by the decree of the court be annulled, or he prays that it may be dissolved, or he prays that a limited divorce be granted, separating him from defendant. If further relief, such as the custody of the children or separate maintenance, be sought, it should be asked in the complaint. The following clause is generally added to the complaint: "And for such other and further order as to this honorable court may appear equitable and just."

8. If the action be brought for a decree dissolving the marriage contract on the ground of adultery, the plaintiff must allege in his complaint the time when, the place where, and the person with whom the offence was committed. He must further allege that the offence was committed without his consent, connivance, privity, or procurement; that five years have not elapsed since the discovery of the offence charged; and that he has not voluntarily cohabited with defendant since such discovery. A decree of divorce cannot be taken by consent of the parties. If defendant fail to answer, the case is referred to a referee, to take proof of the facts alleged. On the report of the referee, the court will grant or deny the decree. The decree annulling or dissolving the marriage contract generally releases the innocent party from the marriage contract, and allows him to marry again, but prohibits the guilty party from marrying again.

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complaint? If the custody of the children be sought? What clause is generally added to the complaint?

8. If the action be brought to dissolve the marriage contract on the ground of adultery, what must the plaintiff allege in his complaint? What must he further allege? Can a decree of divorce be taken by consent? If defendant fail to answer, what is to be done? What effect does a decree dissolving the marriage contract have upon the parties?



## CHAPTER XLVI.

## CONTRACTS.

1. A CONTRACT is an agreement between two or more parties to do, or not to do, some act. Contracts are special or simple. Special contracts are contracts of record, or contracts under seal. All other contracts are simple contracts. A bond entered into before a court or officer thereof, with a condition that some act specified therein shall be performed, under a fixed penalty, is a contract of record. Bonds given before the court, and deeds, are special contracts.

2. Contracts, whether oral or written, if not of record, or under seal, are verbal contracts. The Statute of Frauds requires *the evidence* of some verbal contracts to be reduced to writing; but if not of record or under seal, they are only verbal contracts. By the Statute of Frauds, in the State of New York, the following agreements are void unless some note or memorandum thereof expressing the consideration be in writing, and subscribed by the party to be charged therewith: 1. Every agreement that, by its terms, is not to be performed within one year from the making thereof; 2. Every special promise to answer for the debt, default, or miscarriage of another person; 3. Every agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry. Every contract *for the sale of any goods, chattels,*

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1. What is a contract? Of how many kinds? What are special contracts? What are simple contracts? What is a contract of record? What kind of contract is a deed?

2. What are verbal contracts? What does the Statute of Frauds require? By the Statute of Frauds in the State of New York what agreements are void, unless some note or memorandum thereof expressing the consideration be in writing, and subscribed by the party to be charged therewith? What conditions are required by the same statute to make

or things in action for the price of fifty dollars or more shall be void; unless—1. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged thereby; or, 2. Unless the buyer shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or, 3. Unless the buyer shall, at the time, pay some part of the purchase-money.

3. A contract conveys an interest either in *possession* or in *action*. If one person sells and delivers goods to another for a price paid, the agreement is *executed*. If one person agrees to sell and deliver at a future time, and for a stipulated price, and the other party agrees to accept and pay, the contract is *executory*, and rests in action only. There are also *express* and *implied* contracts. An *express* contract exists, when the parties contract in express words or by writing. An *implied* contract exists, when the law raises or presumes a contract, by reason of some value received or service rendered.

4. It is essential in every contract that there be parties *capable* of contracting, *willing* to contract, and who actually *do contract*. We have already seen how far infants and married women are competent to contract. Every person is presumed to be competent to contract, until the contrary be proved. Sanity is to be presumed, until the contrary be proved. If a court of inquiry has decided that a person is a lunatic, his lunacy is presumed to continue, until the contrary be proved. After an inquest has been held, and a committee appointed to take charge

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a contract for the sale of goods, chattels, or things in action for the price of fifty dollars or more, valid?

3. How does a contract convey an interest? Give an example of an *executed* contract. Give an example of an *executory* contract. What is an *express* contract? What is an *implied* contract?

4. What is essential to every contract? Who are presumed to be competent to contract? What is the presumption as to sanity? If a court of inquiry has decided that a person is a lunatic, what is thereafter presumed as to his lunacy? After an inquest has been held, and a committee appointed to take charge of his person and estate, what is the presumption as to his contracts? What is the rule by the common law

**H**is person and estate, all contracts made by such lunatic ~~are~~ presumed to be absolutely void, unless his sanity can be established by competent evidence. By the common law, a contract made by a person of unsound mind is voidable only, and not void; and when a contract is sought to be avoided on the ground of mental imbecility, the proof of the fact lies upon the person who alleges it. But if mental derangement be once established, the presumption is shifted to the other side, and sanity is then to be shown. A contract made by a person so destitute of reason as not to know the consequence of his contract, though his incompetency be produced by intoxication, is void. Imbecility of mind is sufficient to set aside a contract, when there is an essential privation of the reasoning faculties, or an incapacity of *understanding*, and *acting with discretion* in the *ordinary affairs of life*. If the contract be entered into in consequence of violence, or under the influence of undue restraint, the party may avoid it by a plea of duress. A contract will not be valid, if obtained by misrepresentation or concealment, or if it be founded in mistake as to the subject-matter of the contract. Fraud vitiates all contracts.

5. The parties may contract severally; jointly; jointly and severally; by agent or attorney; in a collective capacity, as partnerships and corporations; by guardian, if a minor; by committee, if *non compos mentis*. When an obligation is assumed by two or more persons, it is presumed to be a joint obligation. Words of joinder

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as to contracts made by a person of unsound mind? Upon whom lies the burden of proof of the insanity? If mental derangement be once legally established, what is the presumption? If the party making the contract is by means of intoxication so destitute of reason as not to know the consequence of his contract? What degree of imbecility of mind will be sufficient to set aside a contract? If the contract be entered into in consequence of force, violence, or undue restraint? If in consequence of misrepresentation or concealment? If it be founded in mistake as to the subject-matter? What is the effect of fraud?

5. In what manner may parties contract? When an obligation is assumed by two or more persons, what is presumed? Are words of joinder necessary to produce a joint obligation? Are words of severance

are not necessary to produce a joint obligation; but words of severance are necessary to produce a several responsibility. In an action on a joint and several obligation, the plaintiff must proceed against all jointly, or each severally. A contract to pay a sum of money to several persons is a joint contract, and no one can sue alone for his proportion.

6. If two or more persons are jointly, or jointly and severally bound, and the party to whom they are bound releases one of them, all are discharged. If one of the parties be discharged by operation of law, as by taking the benefit of the bankrupt law, the others are not discharged. The party who binds himself by a contract is called an *obligor*. The party to whom he is bound is called the *obligee*. If one of the joint obligees die, the right of action is solely with the survivors. If all die, the action must be brought by the executor or administrator of the last survivor. If one of the joint obligors dies, the action must be brought against the survivor.

7. Where two or more persons, not partners, are jointly, or jointly and severally, bound to pay a sum of money, and one of them pays the whole, he may recover from the others the proportion which they ought to have paid. If a judgment has been recovered against several parties jointly, or jointly and severally liable, and one of the defendants satisfies the execution, he has a claim against the other defendants for the proportion which they ought to

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necessary to produce a several obligation? In an action upon a joint and several obligation how must the plaintiff proceed? If a contract is made to pay a certain sum of money to several persons?

6. If two or more persons are jointly, or jointly and severally bound, and the party to whom they are bound release one of them, what is the effect? If one of the parties be discharged by operation of law? What term is applied to the party who binds himself by a contract? What term is applied to the party to whom he is bound? If one of the joint obligees die, in whom is the right of action? If all die? If one of the joint obligors die?

7. When two or more parties are jointly, or jointly and severally bound, and one pays the whole, what may he recover from the others? If a judgment has been recovered, and one of the defendants satisfy the execution? If part of the sureties have become insolvent? Is the con-

**have** paid. If a part of the co-sureties have become insolvent, the surety who pays the entire debt can, in equity, compel the solvent sureties to contribute their share of the whole debt divided among those who are solvent. The contract of contribution is an implied contract. It is a several contract. The surety paying the whole may release one of his co-sureties without waiving his right of action against the rest. Every surety has a claim against the principal for the amount paid by such surety. The second indorser of a promissory note is not liable upon a claim of contribution to the first indorser, unless there be an agreement between the indorsers that they shall be co-sureties. The undertaking of indorsers is separate and successive, and gives no claim to contribution. If judgment be recovered in an action founded upon *tort*, the payment by one of the defendants gives no right to claim contribution from the others. A surety cannot demand contribution from one who became surety at his request.

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## CHAPTER XLVII.

### AGENCY.

1. An agent is a person employed by another to transact some business which the principal himself might transact. The agent is the instrument of the principal, and the principal contracts by his agent. What the prin-

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tract of contribution express or implied? Is it joint or several? What is the effect if one of the sureties who has paid the whole claim release one of his co-sureties? For what has every surety a claim against the principal? If the first indorser pay a promissory note, is he entitled to contribution from the second indorser? What is the nature of the undertaking of the indorsers? If judgment be recovered in an action founded on *tort*, and one of the defendants pays the judgment, does this give a claim to contribution? If a surety become such at the request of another surety?

1. For what purpose are agents employed? How does the principal contract? Whose act is the act of the agent?

principal does by his agent, duly authorized, he does by himself, and the act is the act of the principal.

2. The agent may receive an appointment, which may be oral or in writing; and under such appointment he may bind his principal in all matters within the scope of his agency by oral contracts or contracts in writing. The agent must receive authority under seal to bind his principal under seal. The principal is responsible for, and bound by, the acts of the agent, when there has been an actual appointment, and also when the principal has induced a third party to believe that the agent had been appointed. The question for the jury, in such case, would be, whether or not the principal led the third party into the mistake.

3. Agents are *general* and *special*. A general agent is one authorized to transact generally the business of the principal. A special agent is one authorized to do one or more special acts. The agent's authority is that which is given by the terms of his appointment, or that with which he is clothed by the character in which he is held out to the world. If a general agent exceed his authority, the principal is bound, if the agent acted within the ordinary and usual scope of the business he was authorized to transact, and the third party did not know that he exceeded his authority. If a special agent exceed his authority, the principal is not bound.

4. An agent employed for a special purpose receives no general authority from his principal. The authority of an agent is sometimes presumed, on the ground that the prin-

2. How may an agent be appointed? What may he do under such appointment? What authority must the agent have to bind his principal under seal? When is the principal bound by the acts of his agent? What is the question to be submitted to a jury in cases where the principal has induced a third party to believe that the agent was duly appointed?

3. What is a general agent? What is a special agent? What is the agent's authority? If a general agent exceed his authority, when is the principal bound? If a special agent exceed his authority?

4. Does an agent employed for a special purpose receive any general authority? On what ground is the authority of an agent sometimes pre-

principal has justified the belief that he has given authority to such agent. An agency may be presumed from repeated acts of the agent, adopted and confirmed by the principal. If the principal does not disavow the acts of the agent as soon as they come to his knowledge, he makes these acts his own. The adoption of the agency in part is an adoption in whole. The agent must have authority under seal to bind his principal under seal. Parol ratification of a deed made by an agent not authorized under seal, would not remedy the defect.

5. If an agent commit an injury to person or property, and the liability is assumed by the principal, the agent is not relieved from his liability. A general agent must adopt the mode of performing his duties which is fixed either by usage or the orders of his principal. A special agent must follow the orders of his principal alone. When the agent's instructions do not cover the whole case, he must conform to the established usage. When this usage is defined by law, it must be strictly followed.

6. If the principal give orders to his agent to sell, the agent is not authorized to sell on credit, unless such be the usage of the trade. If such be the usage, then the agent may sell on credit, unless he has received special instructions to sell for cash only. If he sell on credit, having no authority to do so, he becomes personally responsible to the principal for the whole debt. The agent is personally liable—1. If he act without authority; 2. If he exceed or depart from his authority; 3. If he pledge his personal liability; 4. If he conceal his character as

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sumed? What acts will justify such presumption? When does the principal make the unauthorized acts of the agent his own acts? If he adopts the agency in part? If an agent make a deed without authority under seal, would parol ratification remedy the defect?

5. If an agent commit an injury to person or property, and the principal assume the responsibility? What mode must a general agent adopt in performing his duties? By what is a special agent governed? When the agent's instructions do not cover the whole case? When the usage is defined by law?

6. If the principal give orders to his agent to sell, can he sell on credit? If he sell on credit, having no authority to do so? In what

agent; 5. If he render his principal inaccessible; 6. If he does not bind his principal; 7. If he act in bad faith. The principal may revoke the authority of his agent at any time. The revocation should be made known as generally as the fact of the agency, in order to release the principal from the future acts of such agent.

7. Notice to an agent respecting any matter distinctly within the scope of his agency is a notice to his principal. An agent cannot delegate his authority without express authority from his principal. If the agent has no authority to appoint a substitute, the substitute cannot be held as the agent of the principal. He is only the agent of the agent who employs him. The person so employed is responsible only to his immediate employer, and must look to him for compensation.

8. The agent is required to exercise the same degree of care and diligence in the transaction of the business of his principal that men generally exercise in transacting their own business of the same class. The principal bargains for the exercise of all the skill, ability, and industry of the agent, and he is entitled to demand the exertion of all these in his favor. The agent must not, during his agency, put himself in a position adverse to his principal. As agent to sell, it is his duty to get the highest fair price. As agent to buy, it is his duty to buy at the lowest fair price. If an agent to buy be himself the vendor, the court will presume that the transaction was injurious to the principal, and will not allow the agent to

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seven cases is the agent personally liable? When may the principal revoke the authority of his agent? What publicity should be given to the revocation to exonerate the principal from liability from future acts of the agent?

7. When is a notice to the agent a notice to the principal? Can an agent delegate his authority? If an agent, without authority, appoint a substitute, whose agent is the substitute? To whom is the person so employed responsible?

8. What degree of care and diligence is an agent required to exercise in the transaction of the business of his principal? For what does the principal bargain? Can an agent, during his agency, put himself in a position adverse to his principal? As agent to sell, what is his duty? As agent to buy, what is his duty? If an agent to buy be himself the



contradict this presumption, unless, with a knowledge of all the facts, the principal gave his agent previous authority to be such buyer or seller, or afterwards assented to such purchase or sale.

9. The liability of the agent for deviating from instructions, or for misconduct, is measured by the loss or injury which he may cause to his principal. If the loss were not immediately caused by the misconduct of the agent, yet if it be the result of some previous misconduct, the agent is responsible. The verdict against the principal for the misconduct of the agent, is the measure of damages which the principal may recover against his agent.

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## CHAPTER XLVIII.

### BROKERS, FACTORS, AND ATTORNEYS.

1. BROKERS are those agents who are engaged for others in negotiating contracts relative to property. A broker is the agent of his employer. There are several kinds of brokers. Exchange-brokers negotiate in all matters of exchange with foreign countries. Ship-brokers transact business between the owners of vessels and merchants who are engaged in shipping goods. Insurance-brokers are those who are engaged in procuring insurance for others. Pawnbrokers are engaged in loaning money at a high rate of interest, and receiving goods in pawn as a security for the money loaned and interest. Stock-

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vendor, what will the court presume? When only will the court allow the agent to contradict this presumption?

9. What is the liability of the agent for deviating from instructions or for misconduct? If the loss were not immediately caused by the misconduct of the agent, but resulted from some previous misconduct? What is the measure of damage which the principal will recover from his agent?

1. Who are brokers? In what capacity does a broker act? What is the business of exchange brokers? What is the business of a ship

brokers are those who are employed to buy and sell shares of stock in corporations and companies.

2. Factors are agents employed to sell goods consigned or delivered to them by their principals. When the factor resides in the same country with his principal, he is called a domestic factor. He is called a foreign factor when he resides in a different country. When the agent accompanies the ship, taking a cargo aboard, and it is consigned to him for sale, and he is to purchase a return cargo out of the proceeds, such agent is properly called a factor, although usually known by the name of a supercargo.

3. A factor differs from a broker in some important points. The factor may buy and sell in his own name, as well as in the name of his principal. The broker, acting as such, should buy and sell in the name of his principal. The factor is intrusted with the possession and control of the goods bought and sold, and has a lien on them for his commissions. The broker has no such possession of the goods, or lien for his commissions.

4. There is a difference between the liability of a domestic and a foreign factor. By the usage of trade or intendment of law, when domestic factors are employed in the ordinary business of buying and selling goods, it is presumed that a reciprocal credit between the principal, and the agent, and the third party exists. When a purchase has been made by such factor, he, as well as his principal, becomes liable for the debt; and in case of sale, the buyer is responsible both to the factor and principal

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broker? What is the business of an insurance broker? What is the business of a pawnbroker? What is the business of a stock broker?

2. For what purpose are factors employed? Who are domestic factors? Who is a foreign factor? Who are supercargoes?

3. What is the difference between a factor and a broker as to the sale of goods? As to the possession of the goods? As to their lien for commissions?

4. Is the liability of a foreign and domestic factor the same? When a domestic factor is employed in the ordinary business of buying and selling goods, what is presumed? When a purchase has been made by such factor, who becomes liable? When a sale has been made by such

for the purchase-money. The presumption of reciprocal credit may be rebutted by proof of exclusive credit. Foreign factors, or those acting for principals residing in a foreign country, are held personally liable upon all contracts made by them for their employers. In such cases, the presumption is, that the credit is given exclusively to the factor. But this presumption may be rebutted by proof of a different agreement.

5. Factors sometimes act under a *del credere* commission. A *del credere* commission is one under which the factor, in consideration of an additional premium, engages to insure to the principal the solvency of the debtor, and the payment of the debt. Factors in this country are generally known as commission merchants. The compensation of factors and brokers is called *commissions*.

6. The broker and factor are bound to exercise the same degree of care and diligence that men generally exercise in the transaction of their own affairs. They render themselves liable for any neglect, error, or default incompatible with the care and skill required in the business they undertake. They are bound to obey the positive instructions of their principal, unless an unforeseen emergency arise, in which case they must act in good faith, and for the obvious advantage of their principal. The factor having possession of the goods may insure them.

7. A foreign factor, as to third parties, is considered as principal. The foreign principal may sue third parties; but third parties cannot sue the principal. They act with

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factor, to whom is the buyer responsible? Can the presumption of reciprocal credit be rebutted? When a purchase has been made by a foreign factor, who is liable? To whom is the credit presumed to be given? Can this presumption be rebutted?

5. Under what commission do factors sometimes act? What is a *del credere* commission? By what name are factors in this country generally known? What is the compensation of brokers and factors called?

6. What degree of care and diligence are factors and brokers required to exercise? For what do they render themselves liable? What are they bound to obey? If an unforeseen emergency arise, how are they bound to act? Who may insure goods?

7. How are foreign factors considered as to third parties? Are the

the factor only, and on the factor's credit. The weight of decisions favors the rule that the several States in the Union are not foreign States to each other as to factors, although they are foreign to each other as to bills of exchange. The factor may buy and sell, sue and be sued, collect money and give receipts in his own name. A broker can do this only in the name of his principal. The factor has a lien on the property for his commission. The broker has no lien. Neither can delegate his authority. Neither has a right generally to his commission until the service is completed. If, however, an important part of the service has been performed, and its completion is prevented by some irresistible obstacle, without their fault, they may demand *pro rata* compensation. They must have discharged all their duties with proper care, skill, and fidelity, before they can have a valid claim for commissions. For injuries resulting from default, they lose their claim for commission and the principal is also entitled to recover damages.

8. Attorneys, in an extended sense, include all who are employed to transact business for others. A power of attorney may be given by one person to another, to perform any act which the person granting the power could himself perform. One person, by power of attorney under seal, may authorize another to sell real estate, and make and execute a deed for him and in his name. An attorney is bound to transact the business intrusted to his care with due diligence, and is responsible for careless or negligent negligence, or want of skill. An attorney-at-law is :

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different States foreign as to factors? As to bills of exchange? What may the factor do in his own name? Can the factor or broker delegate his authority? When are they entitled to their commissions? If an important part of the service has been performed, and its completion is prevented by some irresistible obstacle, without their fault? In what manner must their duties have been discharged? For injuries resulting from default, what do they lose? To what further is the principal entitled?

8. What does the term *attorneys* include in its extended sense? What acts may be performed under a power of attorney? How is the attorney bound to transact the business intrusted to him? For what is he

officer of the court. He is employed as an agent to transact the business of his clients in court. The agreement of the attorney, within the scope of his employment, binds his client. It is the duty of an attorney-at-law—1. To be true to the court and his client; 2. To manage the business of his client with care, skill, and integrity; 3. To keep his client informed as to the state of his business; 4. To keep the secrets of his client, confided to him as such. If an attorney deposit his client's money to his own private account, he is responsible if the money be lost. If he deposit it to the account of his client, he is not responsible. If discharged by one party, he may act for the other party, provided he makes no improper use of the knowledge obtained in acting for his former client. Like all other agents, he is responsible to his client for any carelessness or negligence in transacting his client's business. He is not responsible for mistakes in doubtful points of law or practice, nor for the fault of council retained by him.

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## CHAPTER XLIX.

### TRUSTEES.

1. TRUSTEES are those who hold property in trust for the use and benefit of others. The party entitled to the benefit of such trust-property is called in law the *cestui que trust* (pronounced *cesti ke trust*). Trustees are appointed by the deed or will of the person vesting the

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responsible? Of what are attorneys-at-law officers? For what purpose are they employed? Within what may the attorney bind his client? What are the duties of an attorney-at-law? If the attorney deposit the money of his client in his own name, and it is lost, who is responsible? If he deposit it in the name of his client? If discharged by one client in a suit, can he act for the other party? For what is he responsible to his client? For what is he not responsible?

1. Who are trustees? What is the party entitled to the benefit of such trust called in law? How are trustees appointed? If an estate is

property in the trustees, or by the court. If an estate is vested in several executors, or trustees, they hold the estate as joint tenants. If the title of the trustee is merely nominal, the legal title is in the person who is entitled to the actual possession of the lands, and the rents, issues, and profits thereof. Where the title of the trustee is not merely nominal, but connected with some power of actual disposition or management, the legal and equitable title is in the trustee, subject to the trust.

2. If a conveyance be made to one person in trust for another, no estate vests in the trustee. Express trusts in New York may be created for either of the following purposes: 1. To sell lands for the benefit of creditors; To sell, mortgage, or lease lands, for the benefit of legatees; or for the purpose of satisfying any charge thereon; To recover the rents, issues, and profits of lands, and apply them as the law directs.

3. Real and personal property may be conveyed to any incorporated literary institution in trust for any of the following purposes: 1. To establish and maintain an observatory; 2. To found and maintain professorships and scholarships; 3. For any other specific purpose comprehended within the provisions of their charter. The trust may be created subject to such conditions as are prescribed by the grantor, and agreed to by the trustees. Real and personal property may be conveyed to the corporation of any town, village, or city, to be held in trust—1. For the purpose of education; 2. For the relief of the poor; 3. For parks, or other ornamental grounds; 4. For grounds for military parades. It may be granted upon such con-

vested in several trustees, how do they hold? If the title of the trustee be merely nominal, in whom is the legal title? Where the title of the trustee is not merely nominal, but connected with some power, in whom is the title?

2. If a conveyance be made to one person in trust for another, what is the effect? For what purposes may express trusts be created in New York?

3. For what purposes may real and personal property be conveyed to any incorporated literary institution? Subject to what conditions may the trust be created? For what purposes may real and personal prop-

ditions as the grantor shall prescribe, and the trustees agree to. All trusts authorized by statute continue for such time as may be necessary to accomplish the purposes for which they were created.

4. The trust estate, and all the legal authority of the original trustees, descends to their successors in office duly appointed. When the purposes for which an express trust shall have been created, shall have ceased, the estate of the trustees will also cease. If one of several trustees die, all the rights, powers, and duties of the trustees vest in the survivors. Upon the death of the last surviving trustee, the court appoint another trustee, who exercises the powers of trustee under the direction of the court. If a trustee has accepted the trust, and he wishes to resign, he must present a petition to the court, praying the court to discharge him from the trust.

5. Upon the petition of any person interested in the execution of a trust, the court may remove any trustee who shall have violated his trust, or for any other cause shall be deemed an unsuitable person to execute the trust. The court may appoint a new trustee in place of the trustee who has resigned or has been removed.

6. The trustee, by accepting the trust, guaranties that he possesses, and that he will exert, that degree of knowledge, diligence, and care reasonably requisite for the proper discharge of the duties he undertakes to perform. There are private trustees and public trustees. A private trustee holds property for a private individual known as

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erty be conveyed to the corporations of towns, villages, or cities? Upon what conditions? For what time do trusts authorized by statute continue?

4. To whom does a trust estate descend? When the purposes for which a trust estate has been created have ceased, what is the effect? If one of several trustees die, what is the effect? If all die? If a trustee has accepted the trust, and wishes to resign?

5. Upon whose petition will the court remove a trustee? For what causes? If the court remove a trustee, what further action will the court take?

6. What does the trustee, by accepting the trust, guaranty? What two classes of trustees? Who are private trustees? Who are public trustees?

the *cestui que trust*. Public trustees hold property for the benefit of the public.

7. The trustee of an estate is bound to secure its reasonable increase. If it lie idle in his hands without cause, he will be charged interest. A trustee cannot purchase property which it is his duty, as trustee, to sell; nor sell the property which it is his duty, as trustee, to purchase. Public and private trustees may so contract as to render themselves personally liable. If the credit was given to the trustee personally, and the creditor was justified in so understanding the case, the trustee must abide the responsibility. An agent who exceeds his authority, and fails to bind his principal, binds himself. On this principle, public trustees who enter into contracts in their official capacity, and so deviate from or exceed their authority as not to bind those for whom they act, bind themselves.

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## CHAPTER L.

### POWER.

1. A POWER is an authority to do some act in relation to lands which the owner granting the power might himself lawfully perform. Any owner of lands, who is capable of performing any act in reference to such lands, may grant a power to another to do the same act. Any person is capable of executing a power, who would be capable of granting a similar power. Powers are general

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7. To what is the trustee bound? If the estate lie idle in his hands? What is the rule as to buying and selling trust property? Can trustees render themselves personally liable on these contracts? When must the trustee abide the responsibility? If an agent exceed his authority, and fail to bind his principal, what is the effect? If a trustee exceed his authority, and does not bind those for whom he acts, what is the effect?

1. What is a power? Who may grant a power? Who may execute a power? When is a power general? When is a power special? When



or special. A power is general, when it authorizes an alienation in fee to any alienee whatever. A power is special, when the person, or class of persons, is designated, or where the power authorizes the alienation of a particular estate less than a fee. A power is beneficial, when no other person than the grantee of the power has any interest in its execution. Where an absolute power of alienation, not accompanied by any trust, is given, such estate is changed into a fee.

2. Every power of disposition is deemed absolute, by means of which the grantee is enabled in his lifetime to dispose of the entire fee for his own benefit. A general power is in trust, when any person, or class of persons, other than the grantee of such power, is designated as entitled to the proceeds to result from the alienation of the lands according to the power. A special power is in trust, when the disposition which it authorizes is limited to be made to any person other than the grantee of such power, or is entitled to any benefit from the disposition authorized by such power.

3. Every trust-power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative. A trust-power does not cease to be imperative when the grantee has the right to select one, and exclude others, of the persons designated as the objects of the trust. When a disposition under a power is made to several persons, without specification of the share to be allotted to each, all are entitled to an equal proportion. If the disposition be left to the discretion of the trustee, the trustee may allot the whole to one, to the exclusion of all the others. If such trustee die, leaving

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is a power beneficial? When an absolute power of alienation is not accompanied by any trust, what is the effect?

2. When is the power of disposition deemed absolute? When is a general power in trust? When is a special power in trust?

3. When is a trust-power imperative? Is it imperative when the grantee has the right to select one and exclude others? If the distribution be left to the discretion of the trustee, what may he do? If such trustee die, leaving the power unexecuted?

the power unexecuted, the power must be executed for the benefit of all.

4. When the power is created by will, and the testator does not designate by whom it is to be executed, the court will appoint a trustee to execute the power. Any person interested in the objects of such trust may compel its execution.

5. If the power is vested in several persons, all must unite in the execution. If one die, the power may be executed by the survivors. If the power is confined to the disposition by grant, it cannot be executed by will. If the grantor of a power require formalities in the execution not required by law, such additional formalities will not be necessary to a valid execution of the power.

6. The intention of the grantor must be followed as to the mode, time, and condition of its execution. When the consent of a third person is required, such consent must be expressed in the instrument by which the power is executed, or must be certified in writing thereon. Instruments executing a power are effected by fraud, in the same manner as conveyances. If the execution of a power be defective, in whole or in part, its proper execution may be decreed in equity.

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4. When the power is created by will, and the testator does not designate by whom it is to be executed? Who may compel the execution of a trust-power?

5. If the trust-power is vested in several persons, who must join in the execution? If one die, how is the power to be executed? If the power authorize the disposal of the estate by deed, can it be done by will? If the power be executed by a married woman, how is it to be acknowledged? If the grantor of a power require formalities not required by law?

6. As to what, must the intentions of the grantor be followed? When the consent of a third party is required, how must such consent appear? If the instrument executing a power be effected by fraud? If the execution of the power be defective?

## CHAPTER LI.

## REAL PROPERTY.

1. ALL estates in lands, in fee or for life, are *real property*. All other estates in lands, such as leases for years, are *personal property*. All other property, not included in real property, is personal property. An estate in fee is an estate in which the owner has the entire property, as the term is used in this country. The people of the State, in their right of sovereignty, are deemed to possess the original title to all lands within the jurisdiction of the State. Upon failure of heirs, the title reverts or escheats to the people of the State. It reverts to the State subject to all mortgages and encumbrances, by judgment or otherwise, in the same condition that it would descend to heirs.

2. Lands in the several States are declared to be *allodial*;—the entire and absolute property is vested in the owner. By the law of England, the king is the supreme proprietor of all the lands in the kingdom. There is no proprietor of land, except the king, who is not a tenant. The feudal system had its origin in the military policy of the northern nations, who poured themselves in vast numbers into all parts of Europe at the decline of the Roman empire. Large districts of land were allotted by the conquering generals to the superior officers of the army.

1. What property is real? What property is personal? What is an estate in fee? Who are deemed to possess the original and ultimate title to all lands within the State? Upon failure of heirs, to whom does the title revert? Subject to what?

2. What are lands in the several States declared to be? What is the meaning of *allodial*? Who is the supreme proprietor of all the lands in England? What are all others holding lands? In what did the feudal system have its origin? What was allotted by the conquering generals? To whom? How dealt out by them? What were these allotments called? What do these words signify in the northern language? What

These were dealt out again in smaller parcels to the inferior officers and most deserving soldiers. These allotments were called *fæda*, feuds, fiefs, or fees. In the northern language, these words signify a constitutional reward. The condition annexed to the reward was that they should faithfully serve, in war, the person by whom they were given. The tenant took the oath of fealty, and upon breach of the condition annexed to the reward and of the oath, the lands again reverted to him who granted them.

3. All grantors, as well as receivers, were mutually bound to defend each other's possessions. Every receiver of lands was bound, when called upon by his benefactor, to do all in his power to defend him. Such benefactor was under the immediate command of his superior; and so upward to the supreme general or the prince. The several lords were reciprocally bound, in their respective gradations, to protect the possessions they had given. The effect of this constitution was soon apparent in the strength and spirit with which they maintained their conquests. Scarcely had the northern conquerors established themselves in their new dominions, when the wisdom of their constitution, as well as their personal valor, alarmed all the princes of Europe in those countries which had been formerly Roman provinces, but had deserted their old masters in the general wreck of the empire.

4. The property of those countries was held by a title wholly independent of any superior, and perfectly allodial. But those princes now parcelled out their royal territories, and persuaded their subjects to surrender their landed

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was the condition annexed to the reward? What oath did the tenant take? What was the effect of a breach of the conditions annexed to the reward, and of the violation of the oath of fealty?

3. To what were all grantors and receivers bound? To what was the receiver of lands bound? Under whose command was such benefactor? What were the several lords reciprocally bound to do? In what did the effect of this constitution appear? What effect did their success have upon the other princes of Europe?

4. By what title had the lands in these countries been held? What did these princes do? How far did the feudal constitution extend?

property, and retake the same under the feudal obligations of military fealty. In a few years the feudal constitution extended itself over all Western Europe. The Roman laws, which had so universally prevailed, were driven out, and for many centuries became lost and forgotten. The feudal system was adopted in England as a part of the national constitution during the reign of William the Norman. In consequence of this change, the king became the universal lord, and original proprietor of all the lands in the kingdom.

5. The grantor of the feud was called the proprietor, or lord, because he retained the ultimate property of the feud, or reward. The grantee, who had the use and possession, was styled the feudatory, or vassal, which is another name for tenant, or holder of the lands. The words of the grant were words of gratuitous and pure donation. The grant was perfected by the ceremony of corporeal investiture, or open and notorious delivery of possession in the presence of other vassals. The tenant, upon investiture, did homage to his lord. Openly and humbly kneeling, being ungirt and uncovered, and holding up his hands both together between those of the lord, who sat before him, he professed that "he did become *his man* from that day forth, of life, and limb, and earthly honor;" and then he received a kiss from his lord. The idea of tenure pervades to a considerable degree the laws of real property in the several States. The title to lands in this country is essentially *allodial*, and every tenant in fee-simple has an absolute title, yet, in technical language, he is called a tenant in fee.

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What was the effect upon the Roman laws? When was the feudal system adopted in England? In consequence of this change, what did the king become?

5. What was the grantor of a feud called? Why? What was the grantee called? What was the character of the words of the grant? How was the grant perfected? What did the tenant do upon investiture? What position did he assume? What did he profess? What did he receive from his lord? What does the idea of tenure pervade? What is the nature of the title to lands in this country? What has every tenant in fee?

6. By the Revised Statutes of New York, which took effect in 1830, all feudal tenures were abolished. But the abolition of tenures did not take away or discharge any *rents, or services certain*, which at any time before had been, or at any time thereafter should be, created or reserved.

7. Every citizen of the United States is competent to hold lands, and take the same by devise, descent, or purchase. Every person competent to hold lands may alienate the same in the form prescribed by statute, except idiots, persons of unsound mind, infants, and, in some States, married women. In some of the States restrictions are placed upon the transfer of real property by the Indians, and in others no distinction is made. An alien may become qualified to hold real estate in most of the States before he is naturalized. He must, however, become a resident of the State, with the intention of becoming a citizen of the United States, as soon as he can be naturalized. He must declare his intention to become a citizen. He must prepare a statement under oath, showing that he has complied with these requisitions. This certificate must be filed with the secretary of state. He is then authorized to take, hold, and transmit real property for a period of six years, during which time he may complete his naturalization. In case of the death of such alien within six years, his heirs may take by descent, if they are qualified to hold the same, and the widow may be endowed.

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6. When were feudal tenures abolished in New York? What did this abolition of tenures not take away or discharge?

7. Who is competent to hold lands? How may they take the same? Who may convey lands? What is the rule as to Indians? Can an alien become qualified to hold real estate? Where must he reside? With what intention? What must he declare? What must he prepare? Where must he file such certificate? What is he then authorized to do? In case of the death of such alien within six years, who may take his property? Is his widow entitled to dower?

## CHAPTER LII.

## CLASSES OF ESTATES.

1. ESTATES in lands are divided into four classes: 1. Estates of inheritance; 2. Estates for life; 3. Estates for years; 4. Estates at will or by sufferance. Tenures are abolished in most of the States. Every estate of inheritance is termed a fee-simple, or fee. Every such estate, when not defeasible or conditional, is termed a fee-simple absolute. Estates tail are generally abolished. Estates of inheritance and estates for life, are freehold estates. Those who hold such estates are freeholders. Estates for years, are chattels real. Estates at will or on sufferance are not liable to levy and sale under execution. An estate during the life of a third person, whether limited to heirs or otherwise, is deemed a freehold only during the life of the grantee or devisee. After his death, it is deemed a chattel real.

2. Estates are of two kinds as to the time of their enjoyment: 1. Estates in possession; 2. Estates in expectancy. In an estate in possession, the owner has a right to the immediate possession of the lands. In an estate in expectancy, the right to the possession is postponed to a future period. Estates in expectancy are divided into two classes: 1. Estates to commence at a future day, denomi-

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1. Into what classes are estates in lands divided? What is the condition of tenures in most of the States? What is every estate of inheritance called? If not defeasible or conditional? What is the condition of entailed estates? Which are freehold estates? What are the holders of such estates called? Which are chattels real? Which are not liable to levy and sale under execution? When are estates for the life of a third person freehold estates? What do they become after the death of the grantee or devisee?

2. Of what two kinds are estates, as to the time of their enjoyment? When has the owner a right to take estates in possession? When has he the right to the possession of estates in expectancy? Into what two

nated future estates; 2. Estates to return after the expiration of some other estate, denominated reversions. A future estate is an estate, the possession of which is to commence at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time. When a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name. A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, possession commencing on the determination of a particular estate, granted or devised.

3. Future estates are either—1. Vested; or, 2. Contingent. Future estates are vested, when there is a person in being who would have an immediate right to the possession of the lands upon the ceasing of the intermediate or precedent estate. Future estates are contingent, while the person to whom, or the event upon which, they are limited to take effect remains uncertain. In New York, every future estate is void in its creation, which suspends the absolute power of alienation for a longer period than there are persons in being to whom an estate in fee in possession can be conveyed. The absolute power of alienation cannot be suspended by any limitation or condition whatever for a longer period than the continuance of two lives in being at the creation of the estate, with one single exception. A contingent remainder in fee may be limited on a prior remainder in fee, to take effect in the event that the person to whom the first remainder is limited shall die under the age of twenty-one years.

4. All life-estates subsequent to those of the first two

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classes are estates in expectancy divided? What is a future estate? When a future estate is dependent on a precedent estate, what may it be termed? What is a reversion?

3. Of what two classes are future estates? When are future estates vested? When contingent? What future estates are void in their creation in the State of New York? For what period only can the absolute power of alienation be suspended? What is the exception?

4. What life estates are void? How does the remainder take effect



are void. Upon the death of these two persons, the remainder takes effect in the same manner as if no other life-estates had been created. The accumulation of rents, issues, and profits of real estate may be directed by deed or will for the benefit of one or more minors, to terminate at the expiration of their minority. If such accumulation be for a longer time than the minority of the persons for whose benefit it is created, it is void as respects the time beyond such minority. If such infants shall be destitute of other sufficient means of support and education, the court will direct a suitable sum to be applied to their maintenance and education.

5. Estates, in respect to the number and connection of their owners, are divided into—1. Estates in severalty; 2. Estates in joint tenancy; 3. Estates in common. Estates granted or devised to two or more persons, in their own right, are held in common, unless expressly declared to be in joint tenancy. Estates vested in executors or trustees, as such, are held by them in joint tenancy. An estate in severalty, is where one tenant holds the estate in his own right. The distinctive feature of an estate in joint tenancy is the right of survivorship. At common law, the entire estate, upon the death of one of the joint tenants, goes to the survivors, and the last survivor takes an estate of inheritance. The right of survivorship, in many of the States, is abolished, except in case the estate is held in trust. Estates in common may be terminated

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upon the death of those two persons? When may the accumulation of the rents, issues, and profits of real estate be directed by deed or will? When does it terminate? If such accumulation be directed for a longer time than the minority of the persons for whose benefit it was created, what is the effect? When may the court direct a suitable sum to be applied to the maintenance and education of such infants?

5. Into how many classes are estates divided, as to the number and connection of their owners? How are estates granted or devised to two or more persons, in their own right, held? How are estates vested in executors or trustees held? What is an estate in severalty? What is the distinctive feature in an estate in joint tenancy? What is the right of survivorship, at common law? Is the right of survivorship still in force in the several States? How may estates in common be terminated?

in two ways: 1. By uniting all the titles in one tenant  
2. By partition.

6. Estates at will originate in mutual agreement, and depend upon the concurrence of both parties. The dissent of either party may terminate it. Such an estate cannot be the subject of conveyance. The estate of a tenant who comes into possession of lands by lawful title, but holds over by wrong after the determination of his interest, is an estate at sufferance. A conditional estate is one which has a qualification annexed to it by which it may, upon the happening or not happening of a particular event, be confirmed, modified, or destroyed. Estates by the court and estates in dower will be examined hereafter.

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## CHAPTER LIV.

### ALIENATION BY DEED.

1. THE usual term of transfer of real estate by deed is: *grant*. The person making and executing the deed, is called the *grantor*. The person to whom the estate is granted, is called the *grantee*. The instrument by which it is transferred, is called a *deed*. Real estate may be transferred from one person to another in three ways  
1. By deed; 2. By will; 3. By descent.

2. Every grant in fee of a freehold estate must be made in writing. It must be subscribed by the grantor or his

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6. In what do estates at will originate? Upon what do they depend? How may they be terminated? Is such an estate a subject of conveyance? What is an estate at sufferance? What is a conditional estate? What other estates are mentioned?

1. What is the usual term of transfer of real estate by deed? What is the person making and executing the deed called? What is the person called to whom the estate is granted? What is the instrument by which the transfer is made called? In how many ways may real estate be transferred from one owner to another?

2. How must every grant in fee of a freehold estate be made? By

agent, duly authorized. It must be under seal, and the authority of the agent must be under seal. It must be duly acknowledged by the grantor or his agent, duly authorized, before it is delivered, or its execution must be attested by at least one subscribing witness. It must be duly delivered by the grantor to the grantee. The execution of a deed, and its delivery, can only be proved by a subscribing witness, in most of the States. If a deed is not acknowledged, and cannot be proved by a subscribing witness, its execution is not complete, and it cannot be recorded. It does not take effect as to third parties until acknowledged or duly proved by a subscribing witness.

3. A deed does not take effect until it is duly delivered by the grantor to the grantee. The formal parts of a deed are—1. The date when made; 2. The names and description of the parties grantor and grantee; 3. The consideration paid by the grantee; 4. The receipt therefor; 5. The grant; 6. A full description of the property granted, with its locality and boundaries; 7. A covenant that the grantor is lawfully seized, and has a right to convey; 8. A covenant that the grantee shall have quiet possession; 9. A covenant that the property is free and clear from all encumbrances; 10. A covenant to do any act necessary to perfect the title in the grantee; 11. A covenant to warrant and defend; 12. Conclusion, containing the date of its execution; 13. Signature and seal; 14. Acknowledgment.

4. Chancellor Kent, in his Commentaries, says: "I apprehend that a deed would be perfectly competent, in any part of the United States, to convey the fee, if it was to be to the following effect:

who subscribed? Must the instrument be under seal? If executed by agent? By whom must it be acknowledged? If not acknowledged, must its execution be proved? What is the last thing necessary to effect the transfer? How only can the execution and delivery of a deed be proved? If a deed is not acknowledged, and cannot be proved by a subscribing witness, can it be recorded? When does it take effect? Is the delivery of the deed by the grantor to the grantee necessary to effect the transfer? What are the formal parts of a deed?

"I, A. B., in consideration of one dollar to me paid by C. D., do bargain and sell (or, in New York, grant) to C. D. and his heirs (in New York, Virginia, etc., the words 'and his heirs' may be omitted) the lot of land (describe it). Witness my hand and seal, etc.

"But persons usually attach so much importance to the solemnity of forms, that the purchaser would rather be at the expense of exchanging a paper of such insignificance of appearance for a conveyance, surrounded by the usual outworks, and securing respect and checking attacks by the formality of its manner, the prolixity of its provisions, and the usual redundancy of its language. The English practice and the New York practice, down to the present time, have been in conformity with the opinion of Lord Coke, that it is not advisable to depart from the formal and orderly parts of a deed which have been well considered and settled."

5. No person would be willing to take the title to an estate under a deed in the form given by the learned chancellor. Such form would be exceedingly defective. By the statute in New York, no covenant can be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. In the form given, there is no covenant on the part of the grantor that he is lawfully seized, and has a right to convey. There is no covenant that the grantee shall have quiet possession. There is no covenant that the estate is free and clear of all encumbrances. There is no covenant to do any act necessary to perfect the title in the grantee. There is no cove-

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4. What form of deed does Chancellor Kent say he apprehends to be perfectly competent, in any part of the United States, to convey the fee? To what does he say persons usually attach much importance? What expense would the purchaser readily incur? In accordance with whose opinion does he say the English practice and the practice in New York are conducted? What was that opinion?

5. Would persons of ordinary prudence be willing to take the title to an estate in the form given by Chancellor Kent? Is such form complete or defective? Are there any implied covenants in any conveyance in New York? What covenants are omitted in the form given? What is the rule as to implied covenants in most of the States?

**nant** to warrant and defend the title. In most of the **States** there is no implied covenant in a deed. All **covenants** must be duly expressed in the deed.

6. The heirs to whom the estate descends, and the devisees to whom the estate is devised, are answerable upon the covenants or agreements of the grantor or devisor to the extent of the lands descended or devised to them. No greater estate passes by any grant or conveyance than the grantor himself possessed at the time of the delivery of the deed, and could then lawfully convey. Every grant is conclusive against the grantor and his heirs, and against subsequent purchasers from the grantor or his heirs, except a subsequent purchaser in good faith and for a valuable consideration, who shall acquire a superior title by a conveyance that shall have been first duly recorded. A conveyance made by a tenant for life or for years, of a greater estate than he possesses, passes to the grantee all the title, estate, and interest which such tenant could lawfully convey.

7. Every grant of lands is absolutely void, if, at the time of the delivery of the deed, the lands are in the actual possession of another person, claiming under a title adverse to that of the grantor. The grantor may execute a mortgage on such lands; and such mortgage, if duly recorded, will bind the lands from the time the possession thereof is recovered by the mortgagor or his representatives.

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8. To what extent are the heirs and devisees responsible upon the covenants of the grantor or devisor? Does the grantee in any case take a greater estate than the estate possessed by the grantor? Against whom is every grant conclusive? What exception is made? If a tenant for life convey a greater estate than he possesses, what is the effect?

7. When is every grant of lands absolutely void? Can the grantor execute a mortgage on such lands? From what time will it bind the lands?

## CHAPTER LIV.

## ESTATES IN DOWER.

1. DOWER is a life-estate, which the law gives to the widow, of a third part of the lands of which her husband was seized at any time during the marriage. The word *lands* generally includes the buildings thereon, and the appurtenances thereto belonging. The term *dower* applies only to the estate of the widow in the lands of her deceased husband. The widow is entitled to a share in the personal property of her husband, which is fixed by statute in the several States. The widow of an alien, entitled by law to hold real estate, is entitled to dower, if she is an inhabitant of the State at the time of her husband's death. If the husband be seized of one estate, which he exchanges for another estate, the widow cannot be endowed of both; but she is entitled to her election, within one year, out of which she will take her dower. If she make no election within one year, she is presumed to have selected the estate received in exchange.

2. If the husband had executed a mortgage on the estate of inheritance of which he was seized before the marriage, the widow is not entitled to dower against the mortgagee, except in the surplus after the mortgage is foreclosed. If the mortgage is paid before the death of the husband, she is entitled to dower in the whole estate. She cannot claim her dower against the mortgagee; but

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1. What is dower? What does the word *lands* include? To what only does the term *dower* apply? Is the widow entitled to a share in the personal property? How fixed? Is the widow of an alien entitled to dower? If the husband has been seized of one estate, which he has exchanged for another, can the widow receive dower from both? If she make no election within one year, what is presumed?

2. If the husband had mortgaged his estate before marriage? If the mortgage is paid before the death of the husband? Can she claim her

she may claim it against all others. Where the husband purchases lands during the existence of the marriage, and give a mortgage for the purchase-money, the widow is entitled to dower only in the surplus after the mortgage is paid and satisfied. The widow is not entitled to dower in lands mortgaged to her husband, unless he foreclose the mortgage before his death.

3. The title to dower may be barred in several ways: 1. By a decree of the court annulling the marriage for causes existing at the time of the marriage; 2. By a decree of the court dissolving the marriage for the misconduct of the wife; 3. By the wife joining with her husband in the conveyance of the estate; 4. By a jointure settled upon the wife; 5. By electing to take a devise or bequest in her husband's will, instead of her dower.

4. A jointure, in its enlarged sense, signifies a joint estate belonging to the husband and wife, which passes in whole to the survivor. A jointure to bar the right of dower is a competent estate of lands and tenements, to take effect, in profit or possession, immediately after the death of the husband. To make the jointure valid, the following circumstances are necessary: 1. It must take effect in possession or profit immediately after the death of the husband; 2. It must be an estate for the life of the wife, or a greater estate; it may be in fee; 3. It must be limited to the wife herself, and not to any other person, in trust for her; 4. It must be made in satisfaction of the wife's whole dower, and not of a part of it only; 5. The estate limited to the wife must be averred to be in satisfaction of her whole dower; 6. It must be made before marriage. By the statute of the State of New York, an estate in lands may be conveyed—1. To a person and his

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dower against the mortgagee? If the husband purchase lands during the marriage, and give a mortgage for the purchase-money? Is the widow entitled to dower in lands mortgaged to her husband?

3. How may the title to dower be barred?  
4. What does a jointure, in its enlarged sense, signify? What is a jointure to bar the right of dower? What circumstances are necessary to make a jointure valid? To whom, in the State of New York, may

intended wife; 2. To such intended wife alone; 3. To any person, in trust for such person and his intended wife  
 4. In trust for such wife alone, for the purpose of creating a jointure for such intended wife, and with her assent.

5. The assent of the wife to such jointure, if she be of full age, must be evidenced by her becoming a party to the conveyance by which it is settled. If she be an infant, her assent must be evidenced by her joining with her father or guardian in such conveyance. Such jointure is a bar to her whole dower. A pecuniary provision may be made for the intended wife; and if her assent is given in the same manner, it will be a bar to any claim of dower in all the lands of her husband. If jointure be made before her marriage, without her assent or after her marriage, she may make her election to take the jointure or her dower. She is deemed to have selected her jointure or pecuniary provision, if she does not commence proceedings to recover her dower within one year.

6. Every jointure, devise, or pecuniary provision, in lieu of dower, is forfeited in the same cases in which dower would be forfeited. The wife cannot be deprived of her dower by any act, deed, or conveyance of the husband, without the assent of the wife, evidenced by her joining with him in the conveyance, and acknowledging the same in the manner required by law. No judgment or decree of any court against the husband, or crime committed by him, can prejudice the right of the wife to dower. The estate which the wife takes in the lands of

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lands be conveyed for the purpose of creating a jointure for an intended wife, with her assent?

5. How must the assent of the wife be evidenced, if she be of full age? If she be an infant? What is the effect of such a jointure? Will a pecuniary provision made for an intended wife bar her dower? If jointure be made by the intended husband, without the consent of the wife, or be made after marriage, what is its effect? When is she deemed to have selected her jointure?

6. In what cases is every jointure, devise, or pecuniary provision, in lieu of dower, forfeited? Can the wife be deprived of dower by any act of the husband without her assent? How must her assent be evidenced? What is the effect of a judgment, decree, or sentence of court against the husband, upon the dower of the wife? Does the estate which the wife



her deceased husband varies somewhat in the several States. In most of the States, she takes one-third of the profits for life; or, in case there be no children, one-half. In some States, she takes one-half in fee, when there are no lineal descendants.

7. The widow may remain in the chief house of her husband, and have her reasonable maintenance out of the estate, for forty days, whether her dower is assigned or not. The widow, if of age at the time of the death of her husband, must claim her dower within twenty-one years. The widow is entitled to damages for withholding her dower. The measure of damages is one-third part of the annual value of the mesne profits. If the action is against the heirs, she will recover from the time of the death of her husband. If against a stranger, from the time of demand, not exceeding, in any case, six years. Such damages are not estimated on any permanent improvements.

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## CHAPTER LV.

### ESTATES BY THE COURTESY.

1. **ESTATES** by the courtesy are life-estates. Where a wife is seized of lands, and the husband and wife have issue born alive, the husband, after the death of the wife, is entitled to the rents, issues, and profits of such lands

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takes by right of dower differ in the different States? What does she take in most of the States? What does she take in some of the States, if there are no lineal descendants?

7. For what time may the widow remain in the chief house of her husband? To what is she entitled during that time? Within what time must the widow, if of age at the death of her husband, claim her dower? To what damages is the widow entitled for withholding her dower? For what time, if the action is against the heirs? For what time, if the action is against a stranger? Are such damages estimated on any permanent improvement?

1. How long do estates by the courtesy continue? What is an estate

during his life. He is called a tenant by the courtesy. Four circumstances are necessary to the existence of this estate: 1. Marriage; 2. Seizin of the wife; 3. Issue of the marriage; 4. Death of the wife.

2. A *void* marriage gives no right to courtesy. If the marriage be *voidable* only, and it is not avoided during the life of the wife, the husband has the right to courtesy. A voidable marriage cannot be avoided after the death of one of the parties. The husband is called tenant, by the courtesy *initiate*, as soon as there is marriage seizin of the wife and birth of the child. The tenancy is consummated by the death of the wife.

3. The issue must be born alive, and during the life of the mother. If the mother die in childbirth, and the child be taken from her alive, the husband has no title by the courtesy. The issue must be such as can inherit the estate of the mother. If lands are given to the wife, and the heirs male of her body, and she have issue a daughter only, the husband is not entitled to courtesy.

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## CHAPTER LVI.

### ESTATES FOR YEARS, AND AT WILL.

1. ESTATES for years, and at will, are created by mutual contract between the parties. The time for the payment

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by the courtesy? What four circumstances are necessary to the existence of this estate?

2. If the marriage be void, what is the effect? If the marriage be voidable only? Can a voidable marriage be avoided after the death of one of the parties? When is the husband tenant by the courtesy initiate? How is this tenancy consummated?

3. Is it necessary that the issue and the mother be both living at the time of the birth of the issue? If the child be not living at the time of its birth? If the child be removed alive after the death of the mother? Is it necessary that the infant be capable of inheriting the estate of the mother? If the estate be given to the wife, and the heirs male of her body, and she have issue a daughter only?

1. How are estates for years and at will created? How is the time for

of rents is generally governed by statute or by custom. Rents are, by custom, in New York city, payable quarterly. When the time for which the tenant is to use and occupy the lands and tenements is described and set forth in the contract, the tenancy ceases at the expiration of such limited time. A tenancy at will may be terminated by the landlord's giving one month's notice in writing to the tenant, requiring him to remove therefrom. The tenant may also give notice of his intention to quit the premises.

2. An estate for years in lands is personal property. All leases for more than one year must be in writing. All leases for more than three years must be recorded, if the tenant would secure his lease against subsequent purchasers.

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## CHAPTER LVII.

### DESCENT OF REAL PROPERTY.

1. THE general rules of law, governing the descent of real property, are nearly the same in all the States. As this is regulated entirely by the legislatures of the several States, some changes have been made in the laws established in the colonial governments. Every person who is capable of alienating his real estate, may by last will and testament devise the same, and regulate its descent in such manner as he shall deem proper. But the law regulates the descent of the real estate of every person who dies without devising the same.

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payment of rent regulated, if not mentioned in the lease? When are rents payable in New York by custom? When does the tenancy cease, if the lease be for years? How may a tenancy at will be terminated? Can this notice be given by either party?

2. What kind of property is an estate for years? How must leases for more than one year be made? If for more than three years?

1. Are the rules of law, governing the descent of real property, the same in all the States? How is the descent of property regulated? Who

2. The person who dies without a will is called *intestate*. The real property of every person who dies intestate, descends to his lineal descendants. If his lineal descendants are all children, or all grandchildren, the inheritance descends to them in equal shares. Then they are of equal degrees of consanguinity. The inheritance descends to such lineal descendants in equal parts, however remote from the intestate the common degree of consanguinity may be.

3. If a part of such children be living, and a part have died, leaving issue, the estate is divided into as many equal parts as there are children living, and children who have died leaving issue. The descendants of each child, who has died, receive the share which their parent would have received if living. In every case where the descendants are of unequal degrees of consanguinity, those who are in the nearest degree take the shares which would have descended to them, had all the descendants in the same degree, who have died leaving issue, been living. The issue of the descendants who have died, respectively, take the shares which their parents would have taken if living.

4. If there be no lineal descendants, such as children and grandchildren, the estate, if it descended on the part of the father, or was *earned* by the intestate, goes to the father. If the inheritance descended on the side of the mother, it goes to the mother, if living. If the mother be dead, the inheritance goes to the father for life, and the reversion to the brothers and sisters of the intestate. If

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may regulate the descent of his real property? How? The descent of whose real estate does the law regulate?

2. What is the person who dies without a will called? To whom does the real estate of every person who dies intestate descend? If his lineal descendants are all children, or all grandchildren, in what proportion do they inherit? Of what degrees of consanguinity are they? How does the inheritance descend if the degrees of consanguinity are more remote, but common to all, as grandchildren, great-grandchildren?

3. If a part of such children be living, and a part have died, leaving issue, how does the inheritance descend? What do the descendants of each child, who has died, receive? What is the rule, in every case, where the descendants are of unequal degrees of consanguinity?

there be no such brothers and sisters, or their descendants, then the inheritance descends to the father in fee.

5. If the intestate die without descendants, and leave no father entitled to the inheritance, but leave a mother, and brothers and sisters, then the inheritance descends to the mother for life, and the reversion to the brothers and sisters. If there are no brothers or sisters of the intestate, nor their descendants, then the inheritance descends to the mother in fee. If there be neither lineal descendants, nor father, nor mother, capable of inheriting the estate, it descends to the brothers and sisters of the intestate, governed by the same rules of consanguinity as are applied to lineal descendants.

6. If there be no lineal descendants, or father or mother, or brother or sister, or their descendants, if the estate came to the intestate *on the part of the father*, it will go to the brothers and sisters of the father, or their descendants in the same manner that it would descend to lineal descendants. If there be no brothers or sisters of the father or their descendants, then the inheritance descends to the brothers and sisters of the mother of the intestate, in the same manner as it would descend to lineal descendants. If the estate came to the intestate *on the part of the mother*, it would go to the brothers and sisters of the intestate's mother; and if none, nor their descendants, then to the brothers and sisters of the father.

4. If there are no lineal descendants, and the estate of the intestate descended on the part of the father, or was earned by the intestate? If the inheritance descended on the part of the mother? If the mother be dead?

5. If there be no such brother, or sister, or their descendants? If the intestate die without descendants, and leave no father entitled to the inheritance, but leave a mother, and brothers, and sisters? If there are no brothers or sisters of the intestate, or their descendants? If there be neither lineal descendants, nor father, nor mother?

6. If there be no lineal descendants, or father or mother, or brother or sister, or their descendants, and the estate came to the intestate on the part of the father? If there be no brothers or sisters of the father, or their descendants? If the estate came to the intestate on the part of the mother? If there be no brothers or sisters of the mother?

7. In case the inheritance came to the intestate on the part of neither the father nor the mother?

7. In case the inheritance came to the intestate on the part of neither father or mother, it will descend to the brothers and sisters of both father and mother in equal shares, in the same manner that it would descend to line descendants.

8. In case of the death of an illegitimate intestate without descendants, the inheritance descends to his mother. If she be dead, it goes to the relatives on the part of the mother. Relatives of the half-blood inherit equally with those of the whole blood, unless the inheritance came to the intestate from some of his ancestors; in which case all not of the blood of such ancestors, are excluded from the inheritance. Descendants and relatives of the intestate begotten before his death, but born after, inherit in the same manner as if they had been born in the lifetime of the intestate.

9. If any child of an intestate has received property by way of advancement, as his portion of the estate, if the same is equal to his share of the estate, he will not be entitled to any further share of the estate. If such advancement be less, he will be entitled to so much as will make his share equal with the others. Money expended in the maintenance and education of the child without a view to settlement, is not deemed an advancement.

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8. In case of the death of an illegitimate intestate, without descendants? If the mother be dead? How do relatives of the half-blood inherit? If the estate came to the intestate on the part of one of his ancestors? If descendants or relatives are begotten before, and born after the death of the intestate?

9. If any child of the intestate has received advancements, by way of settlement? If money be expended in the maintenance and education of a child?

## CHAPTER LVIII.

### PROOF AND RECORDING OF DEEDS AND MORTGAGES.

1. ALL conveyances of real estate must be recorded. They are to be recorded in the county where the property is situated. Every conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, whose conveyance shall be first duly recorded.

2. Different sets of books are provided by the clerks of the several counties for recording deeds and mortgages. In one set of books, all absolute conveyances, such as deeds, are recorded. In the other set of books, all conditional conveyances, such as mortgages, are recorded. To entitle any conveyance to be recorded by any county clerk, it must be acknowledged by the party executing the same, or be proved by a subscribing witness thereto. Such acknowledgment or proof may be taken before a magistrate or commissioner of deeds. Such magistrate or such commissioner must act within the limits of his jurisdiction; and he has no authority to act out of the district for which he was appointed or elected. If the proof or acknowledgment be taken before any judge, it must be taken within the jurisdiction of the court to which he belongs. The proof or acknowledgment may be taken by the mayors of cities, or consuls of the United States residing in foreign countries. The proof or ac-

1. What conveyance must be recorded? Where? If not recorded, what is the effect?
2. How many sets of books are provided by county clerks? What is recorded in each? To entitle a conveyance to be recorded by a county clerk, what is necessary to be done? Before whom may such acknowledgment or proof be taken? Within what limits must the magistrate or commissioner act? Has he any authority to act out of his district? Taken before the judge of a court? What other officers are authorized

knowledge may be taken in any other State or Territory of the United States, by any officer authorized to take such proof or acknowledgment in such State or Territory. The officer taking an acknowledgment must know or have satisfactory proof, that the person making such acknowledgment is the individual described in and who executed the same.

3. The governor of one State may appoint commissioners in any city or county in any of the other States and Territories. They are generally appointed for four years. They have authority to take acknowledgment and proof of any instrument under seal to be recorded. The certificate of such commissioner must be made under his signature and official seal. The certificate must be indorsed on the instrument.

4. Commissioners appointed by the governors of States authorizing them to perform their duties in other States are required to prepare an official seal. The commissioner's name must be upon the seal, together with the words, "Commissioner for the State of ———," and the name of the State, city, and county in which he resides and for which he is appointed. He is required to have a clear impression of the seal made upon wax, or some other tenacious substance, and to cause the same to be filed with the secretary of state, with his signature, in his own handwriting. Before any deed acknowledged or proved before him is entitled to be recorded, a certificate of the secretary of state must be attached. The secretary of state must certify—1. That the commissioner, at the

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to take proofs and acknowledgments? By whom may they be taken, taken out of the State in which the land is situated? What is necessary for the person taking the proof or acknowledgment to know?

8. What officers may the governors of States appoint in other States? For what time generally appointed? What is their authority? How is his certificate made? Where indorsed?

4. What seal must such commissioners prepare? What must be upon the seal? Upon what must an impression of this seal be made? Where to be filed? Accompanied with what? What certificate must be attached to the certificate of such commissioner, to entitle the conveyance to be recorded? To what facts must the secretary of state certify?





time of taking such proof or acknowledgment, was duly authorized to take the same; 2. That the secretary is acquainted with the handwriting of such commissioner, and has compared the signature to such certificate with the signature of the commissioner deposited in his office; 3. That he has compared the seal of such commissioner with the seal deposited in his office; 4. That he verily believes the signature and impression of the seal on the said certificate to be genuine.

5. It is the duty of the secretary of state to prepare instructions and a set of forms, and forward the same to commissioners acting in other States. In foreign countries, proof or acknowledgment of deeds may be taken before American ministers, consuls, and *chargés des affaires*. When a married woman joins in a deed with her husband, she must acknowledge the same; and in several States she must, on a private examination, apart from her husband, acknowledge "that she executed such conveyance freely, and without any fear or compulsion of her husband."

6. The proof of the execution of any conveyance must be made by the subscribing witness. He must state—  
1. His place of residence; 2. That he knows the person described in and who executed such conveyance; 3. That he witnessed the execution thereof. The officer taking the proof must be personally acquainted with such subscribing witness, or have satisfactory evidence that he is the same person who was the subscribing witness to such instrument. If the witness refuse to appear and testify to the execution of the conveyance, any officer authorized to take such proof, and authorized to issue

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5. What is the secretary of state required to prepare? Before whom is proof taken in foreign countries? When a married woman joins with her husband in a deed, is she required to acknowledge the same? How does she acknowledge the same in New York and many other States?  
6. How must the proof of the execution of any conveyance be made? What must the subscribing witness state? What knowledge must the officer taking the proof have? If the witness refuse to appear and testify to the execution of the conveyance, what is to be done? If the witness

a subpoena, may issue a subpoena to such witness, requiring him to appear before him, and testify to the execution. If such witness refuse to appear, or refuse to testify, he may be committed to jail by the officer issuing the subpoena, and may also be fined. In the certificate of proof, it is the duty of the officer to give the names of the witnesses examined before him, with their residence, and the substance of their evidence.

7. When a conveyance has been duly acknowledged or proved, and recorded, the conveyance may be read in evidence; and the record, or a transcript thereof, duly certified, may be read in evidence. This evidence is not conclusive; but it may be rebutted by any party to suit who is affected thereby. If the party contesting the proof make it appear that the proof was taken upon the oath of incompetent witnesses, it is successfully rebutted unless sustained by other competent proof.

8. It is a general rule, that when the acknowledgment or proof of a conveyance is taken before an officer authorized to take the same, yet residing out of the district where the property is located, in addition to his certificate of proof or acknowledgment, the certificate of the clerk of the county, or the clerk of the court, or the secretary of state, under his hand and official seal, must be subjoined specifying that the officer taking the proof or acknowledgment was duly authorized to take the same; that he is acquainted with the handwriting of such officer, and verily believes the signature of the officer to be genuine. The certificate and the conveyance must be recorded together.

refuse to appear or refuse to testify after he is subpoenaed? What must the officer give in his certificate of proof?

7. When a conveyance has been duly acknowledged or proved, and recorded, can it be read in evidence without further proof? Can the record, or a transcript thereof, be read in evidence? Is this evidence conclusive? If the deed was proved upon the oath of incompetent witnesses?

8. If the officer before whom the proof or acknowledgment is taken resides out of the district in which the property is located, what must

9. Conveyances are entitled to be recorded in the order in which they are delivered to the county clerk. They are considered as recorded from the time of such delivery. The officer makes an entry in his record, specifying the minute, hour, day, month, and year when the same was delivered. He also enters the same on the conveyance. The officer who records deeds and other conveyances in New York City is called "register." A mortgage, when paid, may be satisfied on the record. A certificate is made by the mortgagee, specifying that the mortgage has been paid and satisfied. It is signed, acknowledged, and recorded. A conveyance may be proved after the death of the witness. The death of the witness must first be proved. The handwriting of the witness, and of the grantor, may then be proved. It may be recorded in the proper office, if the original deed be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine the same. This does not entitle such conveyance to be read in evidence.

10. No conveyance can be recorded without being proved or acknowledged. Any county clerk or register is liable to fine and imprisonment for recording a conveyance without being proved or acknowledged. If the commissioner, or other officer, be guilty of malfeasance, he is liable to fine, imprisonment, and damages. If a person execute a deed under the power-of-attorney, the

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subjoined? What must such certificate specify? Is it necessary to record this certificate with the conveyance?

9. In what order are conveyances entitled to be recorded? From what time are they considered as recorded? What does the officer recording the same specify in the record? Does he indorse the same on the conveyance? What officer records conveyances in the city of New York? When a mortgage has been paid, what is to be done? What does the mortgagee specify in his certificate? What is to be done with this certificate? How can a conveyance be proved after the death of the subscribing witness? Can it be recorded, if so proved? Does this entitle such conveyance to be read in evidence?

10. What must be done before a conveyance can be recorded? To what penalty is the county clerk liable for recording a conveyance without proof or acknowledgment? If the officer taking the proof or acknowledgment be guilty of malfeasance? If a person execute a deed

deed and the power-of-attorney must both be recorded. A general power-of-attorney, when recorded, is to be revoked by recording the instrument containing such revocation.

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## CHAPTER LIX.

### EMBLEMENTS AND FIXTURES.

1. ALL estates in lands, in fee or for life, are freehold estates, and are real property. All other estates in lands are personal property. The word *lands* generally includes the buildings and appurtenances thereto belonging. If one man erect buildings on the land of another man, without any authority or permission, express or implied, the buildings belong to the owner of the land. "Lands" include not only the soil, but every thing attached to it, above or below, as trees, stones, mines. If a man sells or devises a lot of land, the buildings thereon will pass without being named in the deed or will.

2. If a tree stand upon the line between adjoining owners, the tree belongs to both owners, and neither has a right to destroy it. The limbs of the tree are presumed to follow the course of the roots, and if a fruit-tree stand upon the line between two adjoining owners, each is entitled to the fruit which hangs above his land. The roots of the tree have extended into the soil of both owners, and conveyed nourishment therefrom through the body of the tree, and deposited the same in fruit above the land. The ancient maxim of law is, "*Cujus est solum, ejus est usque*

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under the power-of-attorney, what must be recorded? How is a general power-of-attorney, when recorded, to be revoked?

1. What are freehold estates? What are all other estates in lands? What does the word *lands* generally include? If one man erect buildings on the land of another, without authority or permission, what is the effect? What does the term *lands* include? If a man sell or devise a lot of land, what will pass by such deed or will?

2. If a tree stand upon the line between adjoining owners? If such

*ad ealum.*" This principle applies also to fruit-trees standing near the line of adjoining owners. Each clearly should be entitled to the fruit which falls on his own lands.

3. Crops are real property, while growing. They become personal property, in some States, when ripe; and in others, when severed from the soil. Emblements are crops growing on lands held by a title of uncertain duration. The crops growing on the dower of a widow, or on any other life-estate, are emblements. At the termination of the life-estate, the estate passes to another, but the crops belong to the estate of the deceased. Emblements include all crops raised by annual expense and labor. The fruit of trees does not come under this title. Spontaneous grasses are not emblements. Hops, though growing on ancient roots, are emblements. As soon as the ground is prepared and the seed sown, the title to the crops is perfected; and when a tenant for life dies after the seed is sown, and before harvest, the executors or administrators take the growing crops as a return for the labor and expense of the deceased in tilling the ground. When an estate of uncertain duration is terminated in any other way than by death, or by the act of the owner, he is entitled to emblements. Where the tenant dies before sowing, but after having prepared the ground, there is no claim to emblements. A tenant for years is not entitled to emblements.

4. A fixture is something annexed to the lands or buildings. Fixtures are of two classes—movable and immovable.

tree be a fruit-tree, what right has each in the fruit? Upon what ground? What is an ancient maxim of law? To what does this principle apply?

3. What are crops while growing? When do they become personal property? What are emblements? When an estate of uncertain duration passes to another, to what estate do the crops belong? What do emblements include? What is the rule as to the fruit of trees? Spontaneous grasses? Hops? When is the title to emblements perfected? When a tenant for life dies after the seed is sown, and before harvest, to whom do the growing crops go? When an estate of uncertain duration is terminated during the life of the person holding such estate, and without his consent? When the tenant dies before sowing, but after preparing the ground? Is a tenant for years entitled to emblements?

ble, or permanent. If they are movable, they are personal property. If they are immovable, they become apart of the real property. The question whether a fixture is movable or immovable arises—1. Between the grantor and grantee, in the sale of real property; 2. Between the heir and executor or administrator, in case of the death of the owner of real property; 3. Between landlord and tenant. As between grantor and grantee, the keys of the house are a part of the real property, or so affixed to it as to pass with the land. The manure made in the ordinary process of carrying on a farm, is a part of the real property, and passes with the land, unless expressly reserved. If the manure be artificial, and not procured from the farm, such as guano, it does not pass with the land, until deposited thereon. To constitute a permanent fixture, and give a chattel the character of real estate, there must be a complete annexation to the soil. An extra door, which may be lifted from its hinges, is not a permanent, but a movable fixture. Gas-fixtures, attached to the gas-pipes in a house, are movable fixtures. Machinery, erected for manufacturing purposes on timbers imbedded in the ground, or fastened to the timbers of the building by bolts, screws, or cleats, if it can be moved without injury to the building, is not a permanent fixture, and does not pass by a sale of the lands and tenements.

5. Some things *personal* in their nature, but fitted and prepared to be used with real estate, and essential to its beneficial enjoyment, pass with the lands. The conveyance of a saw-mill will pass the mill-chain, dogs, and bars

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4. What is a fixture? Of what two kinds are fixtures? What kind of property are movable fixtures? Immovable fixtures? In what three cases does the question whether a fixture is movable or immovable arise? Are the keys of the house real or personal property? Does the manure on the land pass with the land? What is necessary to constitute a permanent fixture, and give a chattel the character of real estate? Is an extra door, which may be lifted from the hinges, a permanent or movable fixture? To what class do gas-fixtures belong? Machinery for manufacturing purposes?

5. What will a conveyance of a saw-mill pass? The conveyance of any mill? The conveyance of a farm? The conveyance of a bark-mill?

connected with it. The conveyance of a mill passes the floodgates, and also the machinery, whether affixed or not. The conveyance of a farm will pass the fencing stuff, which has been used for fences, though temporarily detached from the land. A steam-engine, with fixtures used to drive a bark-mill, is part of the realty, and passes by a conveyance of the bark-mill. Articles absolutely necessary to the enjoyment of the land will pass to a purchaser, whether on the land or not; such as doors, windows, locks, keys, etc. They are constructively annexed.

6. A tenant may remove his implements of trade. He may remove the machinery he has erected, if it can be removed without injury to the realty. The tenant may remove any building erected by him for the purpose of carrying on his trade. If the tenant be a tavern-keeper, and erect a building for a shed, barn, stable, or store-room, he may remove the same, if it can be done without injury to the land. The tenant may remove articles erected for ornament or domestic use, if they can be removed without injury. Gardeners may remove trees and shrubs which they planted for the purpose of sale. A farmer who has planted trees on the land he has hired, cannot remove them.

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If the articles are absolutely necessary to the enjoyment of the lands, such as doors, windows, locks, keys, etc.?

6. What implements may the tenant remove? What machinery may he remove? If the tenant has erected a building for the purpose of carrying on his trade? If erected for ornament or domestic use? What gardeners remove? Can a farmer do the same?

## CHAPTER LX.

## GENERAL PROVISIONS RESPECTING REAL PROPERTY.

1. THE primary division of estates is into freehold and less than a freehold. A freehold is an estate of inheritance, or for life, in real property. An owner of a freehold estate is said to be seized of the same. The owner of a less estate is said to be possessed of the same. In England, the king is held to be the only original source of title to real estate. A similar principle has been adopted in this country. The title in lands can only be deduced from the crown, or the United States, or the State governments. The right on the part of government to take private property for public purposes, subject to the obligation of paying a just compensation therefor, is called the right of *eminent domain*. It is exercised in time of war and in time of peace.

2. An estate for life terminates, of course, upon the death of the tenant. Such death may sometimes be presumed from circumstances. A continued absence of seven years raises a presumption of death, which authorizes the next succeeding owner to enter upon the estate. If the tenant for life prove to be still living, he may recover the lands, with the intermediate rents and profits.

3. A right of way is the privilege which one person has of passing over the lands of another. The right of

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1. What is the primary division of estates? What is a freehold? Who are said to be seized, and who only possessed, of real estate? Who is the source of title to real estate in England? What is the source of title in this country? What is the right of the government to take private property for public purposes called? When exercised?

2. How is an estate for life terminated? When may his death be presumed? If the tenant for life prove to be still living, what may be done?

3. What is a right of way? Of how many kinds? If it is a right to



Way is of three kinds. A person may have the right to pass over the lands of another on foot only. This is called a footpath. He may have a right to pass with a horse. This is called a bridle-path. He may have the right to pass with a carriage. This is called a carriage-way. Any way which is common to the whole people, is called a highway. A right of way imports a right to pass in a particular direction, and not the right to change that direction at pleasure. A right of way may be claimed in three modes: 1. By grant; 2. By prescription; 3. By necessity. Uninterrupted use for twenty years gives a right of way by prescription. The use must have been under claim of right. If A. convey to B. land wholly surrounded by other lands of A., B. acquires a right of way by necessity over A.'s lands to the highway. Where a man grants any thing, he is held to have granted whatever is necessary to the use and enjoyment of the thing granted. The right of way by necessity exists only where the party claiming it has no other means of passing from his estate into the highway.

4. Highways are laid out by public authority. This gives the public the right of way, but the soil still remains the property of the private individual, and he may use the same in any way not inconsistent with the public right of way. When the highway is discontinued, the land reverts to him free of encumbrances. The right of way does not authorize the public to turn their cattle upon the road for the purpose of grazing. A farm bounded by the highway extends to the middle of such

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pass over the lands of another, on foot only, what is it called? If on horseback, what is it called? If with a carriage, what is it called? What is any way, common to all, called? What does the right of way import? In what three forms may the right of way be claimed? What gives a right by prescription? Under what claim? If A. convey to B. lands wholly surrounded by other lands of A., what does B. acquire? Where a man grants any thing, what further is he held to have granted? When only does the right of way by necessity exist?

4. How are highways laid out? What is given to the public? What remains in the owner of the soil? How may he use the same? If the highway should be discontinued? Does the right of way authorize the

way. A farm bounded by a private river extends to the middle of the river.

5. Franchises are certain privileges conferred by grant from government, vested in individuals. A ferry is a franchise consisting in the right to transport persons and carriages for hire. The franchise becomes property, and is protected by law. A franchise may be forfeited by disuse; or the government may, in the exercise of its right of eminent domain, resume it upon making full compensation.

6. The owner of lands bounded by the sea or navigable waters owns to ordinary high-water mark. The *sea-shore* is the space between high and low water mark. The owner of lands on a river not navigable, or above tide-water, owns to the centre of the stream, subject to the right of passage to the public. Neither the State nor any individual has a right to divert the stream to his prejudice. Small streams, which cannot be used for boating without improvements, are private property, and not public highways. Navigable rivers are presumed to be open to the public, but private rivers are not. Either presumption may be rebutted. A grant of land bounded on a river above tide-water passes the title to the middle of the stream. An island in a river, if entirely on one side of the centre, belongs to the owner of the lands nearest to the island. If the centre of the stream passes through the island, each owner of the banks is entitled to take to the centre.

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public to turn their cattle upon the road, for the purpose of pasturage? To what does a farm bounded by the highway extend? If the farm be bounded by a private river?

5. What are franchises? Is a ferry a franchise? Of what does it consist? Is a franchise property? How may it be forfeited? Can the government resume it?

6. If lands are bounded by the sea, to what do they extend? What is the sea-shore? If the lands are bounded by a river? Can the stream be diverted from its natural channel? What streams are private property? What rivers are presumed to be open to the public? What are presumed not to be open? Can these presumptions be rebutted? If land be granted, which is bounded on a river above tide-water? To whom do the islands in rivers belong?

7. Every proprietor of the banks of a fresh-water river has a right to the use of the water, as it is accustomed to run. No owner has a right to use it to the prejudice of other owners. It cannot be diverted from its natural channel, nor can it be unreasonably detained. Every owner of the banks has a right to erect a dam thereon. The water-power belonging to the owner of the banks of a river, is the *difference of level* between the surface where the stream in its natural state first touches his lands, and the surface where it leaves. He cannot by digging on his lands lower the channel or deepen it below. The owner of lands through which a stream passes, has no right to make such use of the water as to send it down to an owner below poisoned or corrupted. The water may be used in connection with a tan-yard, but it cannot be returned to the river soiled by admixture with foreign substance to the injury of other proprietors.

8. Where a stream, by the act or neglect of the owner of the banks, is made to overflow adjoining lands, the person guilty of such carelessness or negligence is liable for all damages. If a person detain the water an unreasonable time, and then discharge it in such quantities and with such force as to damage the banks below, he is liable for such damages. At common law, the owner of the banks of a private river is entitled to the fish in the river. If different owners hold the opposite banks, each is entitled to the fish on his own side of the centre of the stream. The right of fishing in all rivers not navigable, is subject to legislative control.

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7. In what way may the owners of the banks of the river use the water? Can one owner use it to the prejudice of another? Can it be diverted, or unreasonably detained? What may every owner of the banks erect? What is the water-power of such owner? Can any owner lower the channel? What use has the owner of the lands no right to make of the water? How may it be used in connection with a tan-yard?

8. If a stream, by the act or negligence of the owner of the banks, overflows the land above or below? If he detains the water an unreasonable time, and discharge it with such force as to damage the banks below? Who is entitled to the fish in private rivers? If opposite banks be owned by different proprietors? To what is the right of fishing in all rivers subject?

9. To constitute a perfect title to real property, it is necessary to have the possession, the right of possession and the right of property. Title to real property by prescription, is a title which arises from a long and continued possession thereof, and is founded upon the presumption that the party would not have been allowed by other claimants to hold such possession without a jus right. Prescription rests upon the supposition of a grant. The period for which a person must hold real estate to acquire a title by prescription, is limited by statute. In some of the States it is fifteen years, and in others, twenty years.

10. A seal is an impression upon wax or some other tenacious substance. This is the common-law definition but in the United States this definition is considerably changed. In Pennsylvania, New Jersey, and the Southern and Western States generally, a mark with a pen after the name, which the grantor acknowledges to be his seal, is sufficient. When a seal is affixed to a contract, it becomes a special contract. Whether a writing is under seal or not, is to be determined by the court on inspection. Corporations have a corporate seal, which some office duly authorized must affix. If affixed by one not authorized, it is not the seal of the corporation. Corporation can convey lands only by a sealed instrument. The seal of a corporation must be proved, to render its deed effectual. Deeds take effect from delivery, and not from date. A deed may be delivered to a third party, to be delivered to the grantee, on complying with some condi

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9. To constitute a perfect title to real property, what is necessary? From what does the title to real property by prescription arise? Upon what presumption founded? Upon what does prescription rest? How is the period for which a person must hold real property, to acquire title by prescription, limited?

10. What is a seal? Is the common-law definition changed in the United States? What is sufficient for a seal in Pennsylvania, New Jersey, and the Southern and Western States generally? When a seal is affixed to a contract, what does it become? Who is to determine whether an instrument is under seal or not? By whom is the seal of a corporation affixed? If affixed by one not authorized? Must the seal of a corporation be proved? When do deeds take effect? What is a delivery

tion. This is a delivery *in escrow*. Deeds are generally attested. In Vermont, two witnesses are necessary. In Maine, Massachusetts, and Delaware, no witnesses are required. In Ohio, two witnesses are necessary. In Tennessee, the rule is the same.

11. The date of a deed is, *prima facie*, evidence of the time of its execution. The date, however, is not absolutely necessary. A date in figures is less to be regarded than a date in words. If a part of the grantors are capable of contracting, and a part are not, the deed will be good as against those who are competent. The wife does not release her dower by joining with her husband in the deed, unless she expressly release the same. The full names of the grantor and grantee should be inserted, with their occupation and residence. This, however, is not absolutely necessary. The description of the property should be minute and accurate. Easements and appurtenances pass with the land, unless expressly reserved. Exceptions out of the grant must be accurately described. An exception wholly repugnant to the grant is void. A covenant in a deed is an agreement to do or to abstain from some act. A covenant may be created by any form of words which show the intent of the parties. Covenants are express or implied. A covenant may be joint or several. Covenants are real or personal. A covenant for quiet enjoyment runs with the land. The grantor covenants that he is lawfully seized in fee-simple, and has good right and full power to convey.

12. The covenant of seizin and right to convey are per-

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*in escrow?* Are deeds generally attested? What does the law require as to witnesses?

11. Of what is the date of a deed evidence? Is the date absolutely necessary? If a part of the grantors are capable, and a part are not? Does the wife release her dower by joining with her husband in the deed? What is the rule as to the names of the parties? As to the description of the property? Do easements and appurtenances pass with the land? What is the rule as to exceptions out of a grant? What is a covenant in a deed? How created? Of what classes are covenants? Does the covenant of quiet possession run with the land? What does the grantor covenant as to seizin?

12. What kind of covenants are those of seizin and right to convey?

sonal covenants, and are broken if the grantor have not the possession, the right of possession, and the right of property. It is no breach of this covenant if there is a less number of acres. The effect of a covenant in a deed is to give the grantee a claim for pecuniary damages. The covenant of seizure and right to convey is broken as soon as the deed is delivered, if the grantor is not seized. The covenant of quiet enjoyment and warranty are not broken until the enforcement of the adverse title to the injury of the grantee. Covenants are *present* or *future*. *Present* covenants are personal covenants, such as seizin and right to convey, which do not run with the land. *Future* covenants are real covenants, such as warranty and for quiet enjoyment, and these run with the land. Fraud renders a deed void as against the party defrauded. Duress renders a deed voidable, and the grantor must re-enter within twenty years. The evidence of fraud must be clear and conclusive. A fraudulent delivery, as well as a fraudulent execution, renders the deed void. The deed of a person of unsound mind is voidable. If he is under guardianship, it is absolutely void. A deed may be avoided by reason of alterations or interlineations. An alteration made by the obligee will avoid the deed, whether material or immaterial, or even if advantageous to the other party. An immaterial alteration made by a stranger does not avoid the deed.

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How broken? What is the effect of a covenant in a deed? When is the covenant of seizin and right to convey broken? When are the covenants of quiet enjoyment and warranty broken? What covenants are present covenants? Which are future covenants? Which run with the land? What is the effect of fraud upon a deed? What is the effect of duress? What evidence of fraud must be produced? What is the effect of a fraudulent delivery? If the grantor be of unsound mind? If he be under guardianship? What is the effect of alterations and interlineations in a deed? If the alteration is made by an obligee? If made by a stranger?

## CHAPTER LXII.

## WILLS.

1. A *will* is a formal statement in writing of the disposition of a person's estate, which he wishes to have carried into effect after his death. The word *testament* is used also as nearly synonymous with *will*. The person who makes a will, is called the *testator* or *testatrix*. When a testator conveys real property to another by will, he is said to devise it. In such cases he generally uses the term, "I give and devise." The person to whom real estate is conveyed by will, is called the *devisee*. When a testator conveys personal property by will, he is said to bequeath it. In such case he generally uses the term, "I give and bequeath." The person to whom personal property is conveyed by will, is called a *legatee*. Real property conveyed by will, is called a *devise*. Personal property conveyed by will, is called a *legacy*. The person appointed to execute the will, is called the *executor*. If a person die without a will, he is called the *intestate*. The person appointed to administer on the estate of an intestate, is called an *administrator*.

2. All persons who can transmit real property by deed can also transmit the same by will, to take effect after their death. Persons of unsound mind, and infants, and in some States, married women, cannot devise their real

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1. What is a will? What word is used as synonymous with will? What is the person who makes a will called? When a testator conveys real property by will, what term is used? What is the person called, to whom real estate is conveyed by will? When a person conveys personal property to another by will, what term is used? What is the person called, to whom personal property is conveyed by will? What is a devise? What is a legacy? Who are executors? If a person die without a will, what is he called? Who are administrators?
2. Who may make a will of real property? Who cannot devise their

estate by will. All persons who can devise real property can bequeath personal property. In many of the States male infants, of the age of eighteen years, and female infants of the age of sixteen years, may bequeath their personal property.

3. The statutes of the several States require wills to be made in writing, except such as are made by a soldier while in actual military service, or by a mariner while at sea. It must be subscribed by the testator at the end of the will. The subscription must be made by the testator in the presence of the attesting witnesses, or the testator must acknowledge his signature to each of the attesting witnesses. The testator, at the time of signing the will, or acknowledging his signature, must declare to the witnesses that the instrument so subscribed is his last will and testament. Two witnesses only, in many of the States, are required to the execution of a will. In the New England States, and in New Jersey, Maryland, South Carolina, Georgia, Alabama, and Mississippi, three witnesses are required. The witnesses must sign their names as witnesses at the end of the will, at the request of the testator. In New York, the witnesses must write opposite their names their places of residence, under a penalty of fifty dollars for omission. In many of the States, it is necessary for the witnesses to sign their names as witnesses in the presence of the testator. If the testator were in a position where he could see the witnesses sign, if he made the attempt, this would be sufficient. But if he

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real estate by will? Who can bequeath personal property? At what age may infants bequeath personal property?

3. How must wills be made in the several States? Who may make an unwritten will? Where must a written will be subscribed? By whom? In whose presence? What acknowledgment may the testator make to the witnesses? What must the testator declare to the witnesses? How many witnesses are required in many of the States? In what States are three required? Where must the witnesses sign their names? At whose request? What do the statutes of New York require the witnesses to write opposite their names? What is the penalty for omission? Is it necessary for the witnesses to sign their names, as witnesses, in the presence of the testator? What would be decided to



were in a position where he could not see them sign, although they were in the same room, it would not be sufficient. In New York, the witnesses are not required to sign their names in the presence of the testator.

4. All property which would descend to heirs may be devised or bequeathed. Such devise or bequest may be made to any person capable in law of holding the same. A will does not take effect until the death of the testator. If the testator devise all his real estate, such devise will be so construed as to pass all his real estate at the time of his death. An acknowledgment by the testator of his signature before the witnesses, is sufficient, though they did not actually see him sign. In case of such acknowledgment, the will need not be before the testator at the time. It may be at a distance on the table. Where the statute requires that the witnesses attest and subscribe as witnesses in the presence of the testator, if he subscribe in their presence, and they go into another room and there attest the will, it is void, unless the testator could see them. It is sufficient if the testator can see the attesting witnesses. If he turn his back upon them, or they go into another room, at his request, where he could see them if he chose, the attestation is good. When the testator and the witnesses are in the same room, it is presumed to be attested in the testator's presence. When they are in different rooms, the contrary is presumed. Either presumption may be rebutted.

be in the presence of the testator? Are the witnesses in New York required to sign their names in the presence of the testator?

4. What property may be devised or bequeathed? To whom may such devise or bequest be made? When does a will take effect? If a testator devise all his real estate to a particular person, and afterwards purchase other real estate, what will pass by such devise? In case of acknowledgment to the witnesses, is it necessary that the testator have the will before him at the time? If the statute require the witnesses to attest the will in his presence, and after he subscribes his name they go into another room and subscribe their names as witnesses? What will be sufficiently in his presence? If he turn his back upon them, or they go into another room at his request, where he could not see them, if he chose? If the testator and witnesses are in the same room, what is presumed? If in different rooms? Can these presumptions be rebutted?

5. The officer before whom a will is proved is called, in some States, surrogate; in others, judge of probate. Any person interested in the estate may apply to the proper surrogate to have the will proved. On application to the surrogate, he will ascertain by satisfactory evidence—1. To what property the will relates; 2. The names and ages, with the place of residence, of the *heirs* of the testator, or that the same could not be found on diligent inquiry; 3. The names and residences of the widow and next of kin. The surrogate will ascertain if any of the next of kin are minors, and the residence of their general guardian, if they have any. If there is no guardian, the surrogate will appoint a *guardian ad litem*. The surrogate issues citations requiring the heirs, widow, and next of kin, and guardians of minors, at a specified time and place, to attend the probate of the will.

6. The surrogate issues subpoenas for witnesses, and he may require any person, having the will in his possession, to produce the same before him for the purpose of its being proved. The surrogate may punish any witness for disobeying his subpoena, as for contempt. Before proceeding to take proof of the execution of the will, the surrogate will require satisfactory evidence of the service of the citations. The surrogate will then cause the witnesses to be examined before him. The examination must be reduced to writing. Two, at least, of the witnesses to the will, if so many are living within the State, and of sound mind, and are not prevented from attending by sickness, must be produced and examined. The absence of any witness must be satisfactorily accounted

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5. What is the officer before whom a will is proved called? Who may apply to the surrogate, or judge of probate, to have a will proved? On application to the surrogate, what will he ascertain by satisfactory evidence? If any of the next of kin are minors? To whom does the surrogate issue citations? What does he require them to do?

6. Who issues subpoenas for the witnesses? If any witness has the will in his possession? If a witness disobeys the subpoena? Before proceeding to take proof of the will, of what will the surrogate require satisfactory evidence? What will the surrogate then cause to be done? Must the examination be reduced to writing? How many witnesses

for. If any sick or infirm witness resides in the same county, it is the duty of the surrogate to proceed to the residence of the witness, and there take his examination. If such infirm witness resides in another county, the surrogate may order such witness to be examined by the surrogate of the county where the witness resides, and the evidence returned to his office. All the witnesses residing in the State must be examined.

7. When a part of the witnesses are dead, or have become incompetent, proof may be taken of the handwriting of the testator, or of such witnesses as are dead or incompetent. The surrogate makes a record of the evidence of the witnesses taken before him, which he signs and certifies. The evidence must be such as to satisfy the surrogate—1. That such will was duly executed; 2. That the testator, at the time of executing the same, was, in respects, competent to make such will; 3. That he was not under any restraint. Every will so proved shall have a certificate of proof indorsed thereon, signed by the surrogate, and attested by his seal of office. The will shall then be recorded. The original will, or the record, or a simplified copy of the record, may be read in evidence without further proof. If all the witnesses are dead, or have become incompetent, the surrogate may take proof of the handwriting of the testator and the subscribers. The will must be deposited with him. If the lands are uninterruptedly held under such will for twenty years, such record may be read in evidence. The will with the record of the proof thereof, should be recorded

and be produced and examined? If any witness is absent? If such witness residing in the county is sick, or infirm, and unable to attend? If such infirm witness resides in another county in the State? When a part of the witnesses are dead, or have become incompetent? What record does the surrogate make of the examination of the witnesses? Of what facts must the surrogate be satisfied by the evidence? If these facts are proved, what certificate is placed thereon? Is the will recorded? What may be read in evidence without further proof? If all the witnesses are dead, or have become incompetent, how is the will proved? Where must such will be deposited? If the lands are uninterruptedly held for twenty years under

each county in which there is real estate affected by such will.

8. Where a will of personal property has been proved before the surrogate, he has the power to grant letters testamentary to the executors. The proof of a will, and the probate thereof, is conclusive, until such probate be reversed on appeal, or revoked by the surrogate, or declared void by a competent tribunal. Any of the next of kin may contest the probate, or validity of such will, at any time within one year. The party contesting the same must file, with the surrogate, his allegations, in writing, against the validity of the will, or the competency of the proof. The surrogate then issues citations to the executors and legatees, requiring them to appear before him, at a time specified, to show cause why the probate of such will should not be revoked. The executor must then suspend all action in relation to the estate, except the collection of moneys and payment of debts. At the time appointed for showing cause, the surrogate proceeds to hear the proof of the parties. If, upon such hearing, he shall decide that the will is invalid, or not sufficiently proved, he will annul and revoke the probate thereof. If otherwise, he will confirm the probate. An appeal may be taken from his decision. If the surrogate revokes the probate, he makes a record thereof, and gives immediate notice thereof to the executor. The powers of the executor cease on receiving such notice. He must account to the representatives of the deceased. He is not

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will? Where is the will, with the record of the proof thereof, to be recorded, or a transcript thereof?

8. When a will of personal property has been proved before a surrogate, what letters does he grant? To whom? For what time is the proof of a will conclusive? Who may contest the probate or validity of such will? Within what time? What must the party contesting the will file with the surrogate? To whom will the surrogate then issue citations? What will he require them to do? What action must the executor suspend? At the time appointed for showing cause, what action does the surrogate take? If, upon such hearing, he shall decide that the will is invalid, or not sufficiently proved, what will he do? If otherwise? Can an appeal be taken from his decision? If the surrogate revokes the probate, to whom does he give notice? What effect is pro-

liable for any act done in good faith, before service of the citations, or done in collection of moneys and payment of debts, previous to the notice of revocation. The party defeated on the appeal must pay the costs of contesting the will.

9. An appeal may be taken from the decision of the surrogate, in New York, to the general term of the Supreme Court within three months. If it appear to the Supreme Court that the decision of the surrogate was erroneous, the court will reverse such decision. When the witnesses to a will reside in another State, it may be proved upon a commission issued by the Supreme Court. If the facts, necessary to establish the validity of such will, shall appear on the proof so taken, the court will direct the examination and the will to be recorded in the office of the clerk of that court. Every will so proved has a certificate of such proof indorsed thereon, signed by the clerk, and attested by the seal of the court, and may then be read in evidence without further proof thereof. The decree of the court may be transmitted to the surrogate having jurisdiction, who may issue letters testamentary thereon. When a will has been lost, or destroyed by accident, the Supreme Court may take proof of the execution contents, and validity of such will, and establish the same, as in case of a lost deed. Upon such will being established by the decree of a competent court, such decree should be recorded by the surrogate

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duced upon the power of the executor on receiving such notice? To whom must he account? For what acts is he not liable? Who is to pay the costs of contesting the will?

9. To what court may an appeal be taken in New York from the final decision of the surrogate? If it appear to the Supreme Court that the decision of the surrogate was erroneous? When the witnesses to a will reside in another State, how may it be proved? If the facts necessary to establish the validity of such will appear on the proof so taken, what will the court direct? What certificate is indorsed thereon? How attested? Can it be read in evidence? To whom may the decree of the court be transmitted? What may the surrogate issue thereon? When a will has been lost or destroyed by accident, what court may take proof of the execution, contents, and validity of such will? How may the court establish the same? Upon such wills being established by the de-

before whom the will might have been proved, if not lost or destroyed, and letters testamentary may be issued thereon. A lost will must be proved to be in existence at the time of the death of the testator, or to have been fraudulently destroyed in his lifetime. Its contents must be clearly and distinctly proved by at least two witnesses. A correct copy, or draft, is equivalent to one witness.

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## CHAPTER LXII.

### LETTERS TESTAMENTARY.

1. WHEN a will has been admitted to probate, the surrogate issues letters testamentary to the executor named in the will. The widow, or a legatee, or any next of kin, or a creditor, may object to granting letters to the executor named in the will. They may make an affidavit, stating that they intend to file objections against granting letters testamentary to such executor, and that they are advised and believe that there are just and substantial objections to granting such letters. Upon filing such affidavit, the surrogate will stay the granting such letters. The objections must, within a reasonable time, be prepared and filed with the surrogate.

2. No person is competent to act as executor, who, at the time the will is proved, is—1. Incapable, in law, of making a contract (except married women); 2. Under

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cree of a competent court, by whom is the decree recorded? Who issues letters testamentary thereon? When must a lost will be proved to be in existence? By how many witnesses must its contents be proved? To what is a copy, or draft, equivalent?

1. When a will has been admitted to probate, what does the surrogate issue? To whom? Who may object to granting letters testamentary to the executor named in the will? What must the person objecting state in an affidavit which he files with the surrogate? Upon filing such affidavit, what will the surrogate do? When must the objections be filed?

2. Who are incompetent to act as executors? If any such person be

the age of twenty-one years; 3. An alien, not being an inhabitant of the State; 4. Who shall have been convicted of an infamous crime; 5. Who, upon proof, shall be judged incompetent by the surrogate to execute the duties of such trust, by reason of drunkenness, improvidence, or want of understanding. If any such person be named in the will as executor, the surrogate will withhold letters testamentary from such person, and issue letters of administration, with the will annexed, to some other person. No married woman is entitled to letters testamentary, unless her husband consent thereto in writing, to be filed with the surrogate. By giving such consent, he becomes responsible for her acts, jointly with her.

3. If a creditor file objections to the responsibility of executor named in the will, it is the duty of the surrogate to investigate such objections; and if it appear that the circumstances of such person would not afford adequate security for the due administration of the estate, the surrogate may refuse letters to such person until he give security. If the executor named in the will be a non-resident of the State, he is required to give security for the due execution of the will. Any person named in will as executor may renounce such appointment. If the executor named in the will does not appear and take upon him the execution of the will within a reasonable time after probate, the surrogate may issue a summons, directed to such executor, requiring him to appear and qualify within a time limited in such summons; or, in default thereof, he will be deemed to have renounced the appointment. In case of sickness, or for other reasonable

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named in the will as executor, what action will the surrogate take? When only is a married woman entitled to letters testamentary? What is the effect of giving such consent?

8. If a creditor file objections to the responsibility of the executor named in the will, what is the duty of the surrogate? If the circumstances of such person do not afford adequate security to the due administration of the estate? If the executor named in the will be a non-resident of the State? Who may renounce the executorship? If the executor named in the will does not appear and qualify within a reason-

cause, the surrogate may extend the time. If he does not appear and qualify, the surrogate enters an order, declaring the renouncement of the appointment.

4. The executor, before he receives letters testamentary, must take an oath that he will faithfully and honestly discharge the duties of an executor. This oath must be filed in the office of the surrogate. If all the executors renounce or are incompetent, letters of administration, with the will annexed, will be issued—1. To a residuary legatee; 2. To a special legatee; 3. To the widow; 4. To the next of kin; 5. To a creditor. The executor has no power until he appear and qualify. He may pay funeral charges, but he cannot interfere in any manner, further than is necessary, for the preservation of the estate. The executor of an executor is not authorized to act as executor in the estate of the first testator.

5. Complaint may be made to the surrogate that the executor has become incompetent, or that his circumstances do not afford adequate security, or that he has removed, or is about to remove, out of the State. The surrogate then issues a citation, requiring the executor to show cause before him why he should not be superseded. At the time specified in the citation, the surrogate hears the proofs and allegations of the parties. The surrogate may require the executor to give bonds, or supersede the letters testamentary, and grant letters of administration with the will annexed, to the person entitled thereto.

able time, what action will the surrogate take? If he does not then appear and qualify?

4. What oath must executors take before entering upon the duties of executor? Where is this oath filed? If all the executors are unqualified or renounce the appointment, what will the surrogate issue? To whom? Has the executor any power before qualifying? What may he pay? To what extent only can he interfere with the estate? Is the executor of an executor authorized to act as executor in the estate of the first testator?

5. What three complaints may be made to the surrogate against the executor? What does the surrogate then issue? What does he require the executor to do? What does the surrogate hear at the time specified? What may the surrogate require of the executor? If he does not give security, what may the surrogate do? What



The administrator with the will annexed must execute the will in the same manner as the executor would have done.

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### CHAPTER LXIII.

## LETTERS OF ADMINISTRATION.

1. THE surrogate of each county has the sole and exclusive jurisdiction, in the county in which he is elected, to grant letters testamentary and of administration in the following cases: 1. When the decedent, at the time, or immediately previous to his death, *was an inhabitant of the county* of such surrogate; 2. When the decedent, not being an inhabitant of the State, *died in the county*, leaving assets therein; 3. Where the decedent, not being an inhabitant of the State, died out of the State, *leaving assets in that county, and no other county*; 4. When the decedent, not being an inhabitant of the State, died out of the State, but *assets thereafter come into the county*.

2. When the decedent, not being an inhabitant of the State, died, leaving assets in several counties, or assets came into the several counties, the surrogate of any county in which there are assets may grant letters testamentary, or of administration. The surrogate who first grants letters, thereby acquires exclusive jurisdiction throughout the State. The person to whom letters are first granted has sole and exclusive authority.

3. Before letters of administration are granted, the

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must the administrator with the will annexed execute? In what manner?

1. In what cases has the surrogate the sole and exclusive jurisdiction, in the county in which he was elected, to grant letters?

2. If the deceased, not being an inhabitant of the State, left assets in several counties, or if assets come into several counties? By what means does either surrogate acquire exclusive jurisdiction throughout the State? Who has sole and exclusive authority as executor or administrator?

death of the intestate must be proved, and that he died without a will. Letters of administration are granted to the relatives of the intestate in the following order: 1. To the widow; 2. To the children; 3. To the father; 4. To the brothers; 5. To the sisters; 6. To the grandchildren; 7. To any other of the next of kin, entitled to a share in the distribution of the estate; 8. To the creditor first applying; 9. To the public administrator in the city of New York; 10. To the county treasurer in other counties. When there are several in the same degree—1. Males are preferred to females; 2. Relatives of the whole to relatives of the half-blood; 3. Unmarried women to married; 4. When several are equally entitled, the surrogate, in his discretion, selects. The husband is entitled to administer on the estate of his deceased wife. He must give bonds. He is liable as administrator for the debts of his wife, only to the extent of the assets received by him.

4. When a person shall apply for letters of administration, and some other person shall have a prior right, the applicant must produce and file the renunciation of such person having such prior right. A citation may be issued to all persons having a prior right, to show cause at a certain time and place why letters should not be granted to such applicant.

5. When there is a contest in relation to the probate of a will, or necessary delay in granting letters, the surrogate may issue special letters of administration to some person, authorizing him to collect and preserve the estate. Such person is generally called a collector. The collector

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3. Before letters of administration are granted, what must be proved? In what order are letters of administration granted? When there are several in the same degree of relationship? When several are equally entitled? If a wife dies, who is entitled to administer? Is he required to give bonds? To what extent is he liable for the debts of his wife?

4. When one applies for letters of administration, and another has a prior right, what must he produce and file with the surrogate? What other action may the surrogate take?

5. If there is a contest in relation to the probate of a will, or necessary delay in granting letters, what may the surrogate do? What is such

has authority to collect the goods, chattels, and debts of the deceased, and for this purpose he may maintain actions as administrator. He may, under the direction of the surrogate, have such property appraised and sold, as shall be deemed necessary for the preservation and benefit of the estate. When letters are granted, the power of the collector ceases; and he delivers to the executor or administrator the property in his hands, and renders his account under oath to the surrogate. The collector must make oath that he will honestly and faithfully discharge the duties of his office, according to law. The collector and administrator must give a bond to the people of the State, with two or more competent sureties. The penalty in such bond shall not be less than double the value of the personal estate of the deceased. The condition of the bond is the faithful execution of the trust, and also that he will obey the orders of the surrogate in the administration of the estate.

6. If one executor or administrator dies, or for any reason becomes incompetent, the others proceed to execute the will or administer the estate. If all die or become incompetent, the surrogate will issue new letters. If an executor or administrator is becoming insolvent, or is about to remove from the State, the surrogate may issue his citation, requiring him to show cause why he should not give further security, or be superseded. The surrogate may require additional security, or he may revoke the letters. Sureties may apply to the surrogate to be released from their responsibility, on account of the future acts of their principal. The surrogate will require

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person generally called? What authority has such collector? What property may he sell? When letters are granted, to whom does the collector deliver the property? To whom does he account? What oath must the collector take? In what amount must he give bonds? With how many sureties? What is the condition of the bond?

6. If one executor or administrator dies, or becomes incompetent to act? If all die, or become incompetent? If an executor or administrator is becoming insolvent, or is about to remove from the State? What may the surrogate require? If additional security is not given? To

other sureties or revoke the letters, and enter an order releasing the former sureties from all subsequent liability.

7. No surrogate can act in any case where he is personally interested; as—1. Next of kin to the deceased; Legatee or devisee under the will; 3. When he is named as executor or trustee; 4. When he is a witness. In case of the incompetency of the surrogate, the county judge is vested with all the power and authority of the surrogate. If the surrogate and county judge are both incompetent then the district attorney is authorized to act as surrogate. When the office of surrogate is vacant, the county judge may act as surrogate. In such case, he uses the seal of the surrogate. When the county judge acts on account of the incompetency of the surrogate, he uses the seal of the county court.

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## CHAPTER LXIV.

### INVENTORY OF DECEDENT'S ESTATE.

1. The executor and administrator are required to make an inventory of decedent's personal estate. The real estate generally passes directly to the heirs. On application to the surrogate, he will appoint two disinterested persons to estimate and appraise the personal estate. The executor or administrator, with the aid of the appraisers, is required to make a complete and perfect list of all

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whom may the sureties apply to be released from further responsibility? What will the surrogate then require? What order will he enter?

7. In what cases is the surrogate incompetent to act? In case of incompetency of the surrogate, who is vested with his power and authority? If the surrogate and county judge are both incompetent, when the office of surrogate is vacant? In such case, what seal does he use? When he acts on account of the incompetency of the surrogate, what seal does he use?

1. What inventory are the executors or administrators required to make? To whom does the real estate generally pass? By whom are appraisers appointed? What list does the executor or administrator make, with the aid of the appraisers? To whom must notice be given?

goods and chattels which have come into his possession, with the value of each article. Notice of the time and place of such appraisement must be given to the legatees and next of kin within the county. The appraisers must take and subscribe an oath "that they will truly, honestly, and impartially appraise the personal property which shall be exhibited to them, according to the best of their knowledge and ability." The appraisers then proceed to appraise the property exhibited to them. They set down each article separately, carrying out the value thereof, in dollars and cents.

2. The personal property of the decedent which comes into the hands of the executor or administrator, which is subject to the payment of his debts, is called *assets*. In almost every State, certain property of a person, being a householder, is exempt from execution for all debts, except for the purchase of such property. When such person dies leaving a family, such property is still exempt. This property cannot be reckoned as assets. The following personal property is deemed assets, and goes into the hands of the executor or administrator for the payment of debts: 1. Estates held by decedent for the life of another person; 2. Estates for years; 3. Movable fixtures; 4. Crops growing on the land of decedent at the time of his death; 5. Produce raised annually by labor and cultivation, except grass growing and fruit not gathered; 6. Rents which had accrued to decedent at the time of his death; 7. Debts secured by mortgages, bonds, notes, or bills; 8. Stock in companies, accounts, money, and things in action; 9. Goods, wares, merchandise, utensils, furniture, cattle, and every other species of personal prop-

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the appraisement? What oath must the appraisers take and subscribe? What do the appraisers then proceed to do? How do they set down the articles and the value?

2. What is the personal property which comes into the hands of the executor or administrator, subject to the payment of the debts of the deceased, called? For what debts is certain property in most of the States exempt from execution? When the owner dies, leaving a family? Can this property be reckoned as assets? What property is deemed

erty not exempted. Permanent fixtures descend with the freehold.

3. In the State of New York, when a man dies, leaving a widow or minor children, the following property is inventoried, but is not appraised, and is not classed with the assets, nor is it liable for the payment of debts: 1. Spinning-wheels, weaving-loom, and stoves put up or kept for family use; 2. The family Bible, family pictures, and school-books, used by or in the family of such deceased person, and books not exceeding in value fifty dollars, which were kept and used as part of the family library before the decease of such person; 3. Sheep to the number of ten, with their fleeces, and the yarn and cloth manufactured from the same; one cow, two swine, and the pork of such swine; 4. All necessary wearing-apparel, beds, bedsteads, and bedding, clothing for the family, the clothes of the widow, and her ornaments proper for her station; 5. Six chairs, knives, forks, plates, teacups, saucers, spoons, one table, sugar-dish, teapot, and one milk-pot. These articles are to remain in the possession of the widow during the time she lives with and provides for any minor child. When she ceases to do so, she is allowed to retain her wearing-apparel and ornaments, and one bedstead and bed, and bedding for the same. The other articles belong to the minor child or children. If there is no such minor child, all these articles belong to the widow.

4. The appraisers also set apart for the use of such widow or minor children, in addition to the above-named articles, other personal property to the value of one hundred

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assets, and goes into the hands of the administrator or executor for the payment of debts? How do permanent fixtures descend?

3. In what State is certain property inventoried, but not appraised? Is this property classed with assets? What implements for manufacturing cloth are in this class? What books? What stock? What clothing? What furniture, crockery, and cutlery? In whose possession do these articles remain during the time the widow lives with the minor child or children? When she ceases to do so, what does she retain? To whom do the other articles belong? If there is no such minor child?

4. To what amount, in addition to the above articles, may the apprais

and fifty dollars. The articles above named are exempt from execution, together with other personal property of the value above stated.

5. Upon the completion of the inventory, duplicates are made and signed by the appraisers. One is retained by the executor or administrator. The other is filed with the surrogate. On filing the same, the executor or administrator must make oath "that such inventory is in all respects just and true; that it contains a true statement of all the personal property of the deceased, which has come to their knowledge." Such oath must be annexed to the inventory.

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## CHAPTER LXV.

### PAYMENT OF DEBTS AND LEGACIES.

1. The executor or administrator may sell the personal property, when it is necessary for the payment of debts and legacies. The sale may be public or private. If any articles of personal property are bequeathed, they are not to be sold until the residue of the personal estate has been applied to the payment of the debts. The surrogate may authorize the executor or administrator to compromise any claim belonging to the estate. Debts are to be paid in the following order: 1. Debts entitled to preference under the laws of the United States; 2. Taxes assessed previous to the death of the decedent; 3. Judgments dock-

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ers set apart other personal property for the use of the widow and minor children, or either of them? Is all the property above described exempt from execution in New York?

5. Upon the completion of the inventory, what is done by the appraisers? What is done with each copy? What oath does the executor or administrator take, on filing the inventory with the surrogate? To what is the oath annexed?

1. What property may the executor or administrator sell? How may the sale be made? If any articles of personal property are bequeathed? Who may authorize any claim to be compromised? In what order are debts to be paid? Is payment of one debt in any class entitled to pref-

eted against the deceased, according to the priority thereof; 4. Recognizances, bonds, sealed instruments, notes, bills, and unliquidated damages and accounts. No payment in any class is entitled to preference, except in the third class. No part of the property of decedent shall be retained by an executor or administrator in satisfaction of his own debt, until approved and allowed by the surrogate.

2. The executor or administrator may publish a notice in some paper in the county, once a week for six months, requiring persons having claims against the estate to exhibit them, with their vouchers, at a place mentioned in such notice, on or before a day named therein. The executor or administrator, upon any claim being presented, may require satisfactory vouchers in support thereof, and the affidavit of the claimant that no payments have been made thereon, and that there are no offsets against the same, to the knowledge of such claimant. If the executor or administrator doubts the justice of the claim, he may agree, in writing, to refer the same to arbitrators, to be approved by the surrogate. The agreement may be filed with the clerk of one of the courts, and an order entered referring the matter to the persons selected. The arbitrators proceed to hear and determine the claim, and make their report to the court in which the order of reference was made.

3. If a claim is presented and rejected, a suit must be commenced thereon, within six months thereafter, or the claim will be barred. No legacy is to be paid until the expiration of one year from the time of granting letters

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erence? Can the executor or administrator retain any of the property of the decedent in satisfaction of his own debt?

2. What notice may the executor or administrator give to creditors of the estate? Upon presentation of any claim, what may they require? What affidavit in addition to vouchers? If there is still a doubt of the justness of the claim, what may be done? Where is such agreement filed? What order is entered? What action do the arbitrators or referees take?

3. If a claim is presented, and rejected, how soon must an action be commenced thereon? If not commenced within that time? What time



testamentary, unless the same be directed by the will to be sooner paid. If a legatee be a minor, and the legacy be under fifty dollars, it may be paid to his father for his benefit. If over fifty dollars, it may be paid to his guardian, on giving security. The surrogate may direct that the legacy be invested in permanent securities, and the interest applied to the support and education of the minor.

4. The executor or administrator, at the expiration of eighteen months from the time of his appointment, renders to the surrogate an account of his proceedings. He must produce vouchers for all debts and legacies paid, and for funeral charges, and necessary expenses. Such vouchers must be deposited with the surrogate. He may be allowed for sums of less than twenty dollars without vouchers, not to exceed in all five hundred dollars.

5. The surrogate allows the executor for receiving and paying out sums, less than one thousand dollars, at the rate of five per cent. For all sums exceeding one thousand, and not exceeding five thousand, two and a half per cent. For sums exceeding five thousand, one per cent. He is also allowed his just and reasonable expenses. If there are two executors, they receive in proportion to the services rendered. If the deceased died intestate, or if, having left a will, there is a surplus after paying the debts and legacies, it is distributed to the widow and next of kin. The widow shall have—1. If there are descendants, one-third; 2. If there are no descendants, one-half; 3. If a father, one-half; 4. If a mother, one-half; 5. If a

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must elapse before any legacy is paid, unless the same is directed in the will to be sooner paid? If the legatee be a minor, and the legacy is less than fifty dollars, to whom may it be paid? If more than fifty dollars? What may the surrogate direct the legacy to be invested?

4. When does the executor or administrator render his account to the surrogate? For what must he produce vouchers? What is to be done with such vouchers? What payments may the surrogate allow without vouchers?

5. What per cent. does the surrogate allow the executor or administrator for receiving and paying out sums of money less than one thousand dollars? Between one and five thousand dollars? Over five thousand dollars? If they have incurred just expenses? If there are two or more executors or administrators? If there is personal property left

brother, sister, nephew, or niece, one-half, and two thousand dollars of the other half; 6. If there are no descendants—father, mother, brother, sister, nephew, or niece—the whole. The father shall have—1. If descendants, nothing; 2. If no descendants, but a widow, one-half; 3. If no descendants nor widow, the whole. The mother shall have—1. If descendants or father, nothing; 2. If no descendants nor father, but brother or sister, an equal share with such brother or sister; 3. If no descendants, nor father, brother, sister, nephew, or niece, but a widow, one-half; 4. If no descendants, nor father, brother, sister, nephew, niece, nor widow, the whole; 5. If the deceased were illegitimate, and left no descendants, nor widow, the whole; 6. If she be deceased, the relatives on the part of the mother inherit. The brothers and sisters shall have—1. If descendants, nothing; 2. If a father, nothing; 3. If a widow, one-half, less two thousand dollars; 4. If a mother, an equal share with the mother; 5. If no mother, the whole.

6. If the personal estate of the deceased is not sufficient to pay the debts, the executor or administrator may apply, on petition, to the surrogate for authority to mortgage, lease, or sell so much of the real estate as may be necessary to pay the debts. The petition must set forth—1. The amount of the personal property; 2. How the

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after paying debts and legacies, to whom is it distributed? To what share will the widow be entitled, if there are descendants? If there are no descendants, but a father? If there are no descendants, but a mother? If there are brothers, sisters, nephews, and nieces only? If there are no descendants, nor father, mother, brother, sister, nephew, or niece? To what share of the estate is the father entitled, if there are descendants? If there are no descendants, but a widow? If there are no descendants, nor widow? To what share of the estate is the mother entitled, if there are descendants or father? If there are no descendants, nor father, but brother or sister? If no descendants, nor father, brother, sister, nephew, or niece, but a widow? If no descendants, nor father, brother, sister, nephew, niece, nor widow? If the deceased were illegitimate, and left no descendants, nor widow? If the mother be deceased? What share of the personal estate will the brothers and sisters have, if the deceased left descendants? If a father? If no descendants, or father, but a widow? If a mother? If no descendants, father, mother, or widow?

6. If the personal estate is not sufficient to pay the debts, to whom

same has been applied ; 3. The debts still outstanding ; 4. A description of all the real estate of which deceased died seized, with the value of each lot ; 5. The names and ages of the devisees and heirs. The surrogate may make an order requiring all persons interested to show cause before him, on a day specified, why such authority shall not be given. On due proof of service of the order, the surrogate proceeds to hear and determine the allegations and proofs. The demands against the estate deemed valid, with their vouchers, are to be filed in the surrogate's office. If the surrogate is satisfied that it is necessary to dispose of a part or all the real estate for the payment of just debts, he will ascertain if such money can be raised by mortgage or lease ; and if so, he will direct such mortgage or lease to be made. No lease can be made for a longer time than the minority of the youngest child. If the money cannot be raised by mortgage or lease, the surrogate may order so much of the real estate to be sold as shall be sufficient to pay the debts. If a part cannot be sold without prejudice, the whole may be sold.

7. Before granting the order, the surrogate requires a bond to the people of the State, in a penalty of double the amount to be raised, for the faithful execution of the trust. Due notice of the time and place of sale must be given. The sale must be made in the county in which such property is located. The sale must be made at public auction. No executor or administrator can become the purchaser. A return of the proceedings must be made to the surro-

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does the executor or administrator apply for further orders? How? What does he ask in such petition? What must be set forth in such petition? What order may the surrogate make? On proof of the service of the order, what action does the surrogate take? Where must the demands against the estate, with their vouchers, be filed? If the surrogate is satisfied that it is necessary to dispose of a part or all of the real estate for the payment of debts, what will he ascertain? For what time only can a lease be made? If the money cannot be raised by mortgage or lease, what may the surrogate order? If a part cannot be sold without prejudice?

7. Before granting the order, what bond will the surrogate require? Is it necessary to give notice of the sale? Where must the sale be made?

gate. If the surrogate is satisfied that the property was sold for less than its real value, and that ten per cent. more can be obtained, he will order a resale. If the sale was fairly conducted, the surrogate will make an order confirming the sale. The conveyance is executed by the executor or administrator, or by a person authorized by the surrogate to act in their stead. The order of sale, and the order confirming the sale, must be recited in the deed. The sale is made *free* and discharged from all claim for dower of the widow. It is subject to all judgments, mortgages, or other liens, existing at the time of the death of the deceased.

8. When the property is sold, the money must be returned to the surrogate. He, in the first place, pays the expenses of the sale. He then satisfies the widow's claim to dower, by paying her a sum in gross, according to the principal of annuities, sufficient to satisfy her claim. If the widow refuse to take such sum, then one-third of the purchase-money shall be invested in permanent securities, the interest thereof to be paid to the widow during life. If after making such deductions there is sufficient to pay the debts, they shall be paid in full. If there is not sufficient to pay in full, the creditors shall be paid in proportion to their claims. If there is a surplus, it shall be distributed to the next of kin, according to the rules of descent of real property.

9. Actions upon contract may be maintained by and against executors and administrators, in all cases in which

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How made? Who are prohibited from purchasing? To whom is a return of the sale made? When will the surrogate order a new sale? When will he make an order confirming the sale? By whom is the conveyance executed? What orders must be recited in the deed? Is the sale made subject to, or free from, the claim of dower? Subject to what liens is the sale made?

8. When the property has been sold, to whom is the money returned? What does the surrogate first pay? What does he then satisfy? How? If the widow refuse to take such sum? If, after making such deduction, there is sufficient to pay the debts? If there is not sufficient? If there is a surplus, how distributed?

9. When may actions be maintained by and against executors and ad-

the same might have been maintained, by or against the decedent. It is not necessary to join those in the action who have not qualified. In the city of New York, a public administrator is appointed. He acts under oath and gives a bond. He has authority to take charge of the property of persons dying intestate, leaving personal property in the county; or where such property comes into the county after the death of the owner; or where he shall die at quarantine, leaving personal property; or where such property shall arrive at quarantine after his death; or where a person dies on the passage to New York, and goods come to the quarantine. The widow and next of kin are entitled to administer, if they reside in New York, in preference to the public administrator. The powers and duties of the public administrator are the same as other administrators, in reference to the estate they administer.

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## CHAPTER LXVI.

### REVOCATION OF WILLS.

1. A WILL may be revoked by another will, in writing, declaring the revocation, and executed with the same formalities as the will was required to be executed. A will may be altered in the same manner. A will may be revoked by burning, tearing, cancelling, obliterating, or destroying, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent. The direction

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ministrators? Is it necessary to join those who have not qualified? In what city is a public administrator appointed? Does he act under oath? Does he give bonds? Of what property does he take charge? What are his general powers and duties?

1. What is the first-mentioned mode of revoking a will? How executed? How may a will be altered? In what other way may a will be revoked? By whom may this be done? How proved?

and consent of the testator, and the destruction thereof, must be proved by at least two witnesses.

2. If a man make a will, disposing of his whole estate, and afterwards marry, and have issue of such marriage, and the wife or issue be living at his death, such will is revoked, unless provision has been made for such issue by some settlement, or by the will, or be mentioned in such way as to show an intention not to make such provision. No other evidence to rebut such presumption can be received. A will executed by an unmarried woman is revoked by her subsequent marriage.

3. Any act of the testator by which the estate bequeathed shall be altered, but not wholly divested, is not deemed a revocation. The devise or bequest passes to the devisee or legatee, subject to the same encumbrances that would attach to it if it passed to heirs. If such alterations are entirely inconsistent with such devise or bequest, they will operate as a revocation thereof.

4. If, after making a will, the testator shall make a second will, cancelling the first, the destruction or revocation of the second will does not revive the first, unless it appear by the terms of such revocation that it was his intention to revive and give effect to the first will, or unless he shall duly republish his first will.

5. If a devisee or legatee die before the testator, leaving descendants, the devise or bequest does not lapse, but passes to such descendants. If a devise or bequest be made to a subscribing witness, such devise or bequest is

2. If a man make a will disposing of his whole estate, and afterwards marry, and have issue of such marriage, and the wife or issue be living at the time of his death? Can any other evidence be received to rebut this presumption? If an unmarried woman make a will, and afterwards marry?

3. If the estate be altered, but not wholly divested? How does the devise or bequest pass to the legatee or devisee? If such alterations are entirely inconsistent with such devise or bequest?

4. If, after making a will, the testator shall make a second will, cancelling the first, and afterwards revoke the second will?

5. If a devisee or legatee die before the testator, leaving descendants? If a devise or bequest be made to a subscribing witness? If such witness

**void**, if the evidence of such subscribing witness is necessary to establish the will. Such legatee or devisee, however, is entitled to the same share of the estate to which he would be entitled if there were no will, if it does not exceed his legacy or bequest. If a testator devise an estate, and afterwards mortgage the same, it passes to the devisee, subject to such mortgage. If the testator devise an estate, and afterwards sell the same, it amounts to a revocation of the devise.

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## CHAPTER LXVII.

### GENERAL PARTNERSHIPS.

1. A PARTNERSHIP exists when two or more persons combine their property, labor, and skill in the transaction of business, for their common profit. A partnership is presumed to be general, when there are no stipulations, and no evidence from the course of business, to the contrary. A partnership may be created for a special purpose, or be confined by the parties to a particular line of business, or to a single transaction. Articles of co-partnership are generally signed by the parties, and the partnership is considered as beginning at the date of the articles, unless they contain a stipulation to the contrary.

2. Persons who are competent to transact business on their own account, may enter into partnerships. The partners usually own together both the property and the

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would be entitled to a share of the estate, if the will should not be sustained? If the testator devise the estate, and afterwards mortgage the same? If the testator devise an estate, and afterwards sell the same?

1. When does a partnership exist? When is a partnership presumed to be general? For what may partnerships be created? What is generally signed by the parties? When is a partnership considered as beginning?

2. Who may enter into partnerships? What do the partners generally own together? Can there be a partnership in the profits simply?

profits; but there may be a partnership in the profits only. As between the partners, the property may belong wholly to one member of the partnership, although it is bound to third parties for all the debts of the firm. One partner may own all the property, and the other may invest his skill and labor for a share of the profits.

3. All kinds of property may be held in partnership; but real estate is still subject to the rules which govern that kind of property. When real property is purchased with partnership funds, it will be treated as partnership property, and held, like personal property, liable for the debts of the firm. The share of a deceased partner in the surplus of the real estate, after all the debts are paid, and the claims of the several partners adjusted, will be considered and treated as real estate. Improvements made with partnership funds on real estate belonging to one of the partners, will be treated as personal property of the partnership. The widow is entitled to dower in the share of partnership real property which belongs to her deceased husband's estate, after all the debts and liabilities of the firm are paid.

4. The good-will of a partnership may be considered as property for many purposes. Although it cannot be attached, it may be assigned for the benefit of creditors. A new partner cannot be introduced into the firm, without the consent of all the partners. If one partner should sell his interest in the partnership, this would effect a dissolu-

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As between the partners, to whom may the property belong? For what is the partnership property bound to third parties? What may one own, and the other invest?

3. What property may be held in partnership? To what is real estate still subject? When real estate is purchased with partnership funds, how will it be treated? For what is it held liable? How will the share of a deceased partner in the surplus of the real estate be considered, after the debts are paid? If improvements are made with partnership funds on the real estate of one partner? In what share of the partnership real estate will the widow of a deceased partner be entitled to dower?

4. How may the good-will of a partnership be considered? Can it be attached? Can it be assigned? Can a new partner be introduced into a firm without consent of all the partners? If one partner should sell



tion of the partnership. A partnership may be formed by a written or parol agreement. Partners generally agree to enter into business together, and share the profits and losses. In the absence of specific stipulations or controlling evidence, the presumption of law is that the partners share the profits and losses equally. A partner may take any share of the profits which may be agreed upon by the partners. If a person is to reserve one-tenth of the profits for his services, he is still a partner. If he is to receive a salary equal in amount to one-tenth of the profits, this would not make him a partner. It would not give him any control in the business, or render him liable for the debts of the firm.

5. Partnerships are usually formed by a participation of both profits and losses, but an agreement may be entered into between the partners, that one shall have his share of the profits and not be liable for any of the losses. This agreement would be valid as between the partners. The partners among themselves may make any bargains they choose. But no such agreement will protect such partner from liability for the debts of the partnership, unless the creditor knew of this bargain between the partners, and gave the credit to the other partners only.

6. A *secret partner* is one not openly known to be a partner. A *dormant partner* is known as a partner, but he takes no share in the transaction and control of the

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his interest in the firm, what would be the effect? How may a partnership be formed? What is the general agreement between partners? In the absence of specific stipulations or controlling evidence, what is the presumption of law? What share of the profits may any partner take? If a person is to receive one-tenth of the profits for his services? If he is to receive a salary equal in amount to one-tenth of the profits? Of what would it give him no control? Would this render him liable for the debts of the firm?

5. In what do the partners usually participate? What agreement may be entered into between the partners? Between whom would this agreement be valid? What agreements may partners make between themselves? For what will no such agreement protect such partner from liability?

6. What is a secret partner? What is a dormant partner? For what debts is a secret partner liable? If a retiring partner continue to receive

partnership business. A secret partner is liable for the debts of the firm, contracted during the time he was a partner. A retiring partner, who continues to receive a share of the profits, is still liable for the debts. If he receives a definite sum annually, in no way dependent on the profits, he is not liable. This is only a debt of the partnership, and does not involve him in their responsibility to others.

7. When a partner retires from a firm, notice is usually given by public advertisement, or by letters, to the customers of the firm. A creditor of the firm cannot hold the retiring partner for any credit given to the firm, after such retirement and notice. A *nominal partner* is one held out to the world as a partner, without participation in the profits or losses. Such partner is liable for the debts of the firm. If a person admits that he is a partner in a firm *before the credit is given*, he will be bound by such admission. Such admission is conclusive evidence of his being a partner, if made before the credit is given. *If made after the credit is given* it is not conclusive, and may be rebutted. If a purchase is made by one person, and credit given to him alone, and he afterwards associates with others as partners, the creditor has no claim upon the firm.

8. The liability as partners arises—1. From a person's holding himself out to be a partner; 2. From participation in the business, and its profit and loss. There is no liability as partner, where there is no participation in the

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a share of the profits? If he receive a definite sum annually, in no way dependent upon the profits?

7. When a partner retires from a firm, what notice is usually given? Can a creditor of the firm hold a retiring partner? Who is a nominal partner? For what is such a partner liable? If a person admit that he is a partner in a firm before the credit is given? When is such admission conclusive evidence of the fact? When is it not conclusive evidence? Can it then be rebutted? If a purchase is made by one person, and credit given to him alone, and he afterwards associate with others as partners?

8. From what does the liability of persons as partners arise? When is there no liability as partner? By what acts in reference to the partnership business are all the partners bound? Whose are the acts

profits, nor any use of the person's name permitted by him, so as to justify the creditor in selling on his credit. All the members of the firm are bound by the acts of one partner, in reference to the partnership business. The acts and contracts of one, are in law the acts of all. Each partner is to some extent the agent of all. The mutual responsibility of the partners seems to be founded upon these three principles—1. Each partner acts as the agent of the firm; 2. There is a community of property; 3. There is a community of interest. If an action is brought against several persons as partners, and the fact of co-partnership is admitted or duly proved, then the admission of one of the partners as to any matter between the firm and another party, is evidence against all the partners. When the existence of the partnership is in dispute, the admissions of one affect him only, and do not bind the others. If two firms are partners, admissions of one affect both.

9. Persons are not jointly liable, unless they had a joint interest at the time the contract was made. All sales, purchases, assignments, pledges, mortgages, made by one partner on the partnership account, and in good faith on the part of the other party, are binding on the firm. A release by one partner, is a release by the firm. A release to one partner, is a release to all. Any fraud or collusion destroys the effect of such release. The release must be under seal. The discharge of one partner by operation of law, does not discharge the other members of the firm.

and contracts made by one? In what capacity does each partner to some extent act? Upon what is the mutual responsibility of the partners founded? If an action be brought against several persons as partners, and the fact of the partnership is admitted or duly proved, what effect does the admission of one of the partners have? When the existence of the partnership is in dispute, what effect does the admission of one have? If two firms are partners, and one firm make admissions? 9. If the parties had no joint interest at the time the contract was made? What acts done by one partner on the partnership account are binding on the firm? If a release be made by one partner? If a release be made to one partner? If there is any fraud or collusion, what is the effect? Must the release be under seal? If one partner be discharged by operation of law? If the signature or acknowledgment of the firm be

The signature or acknowledgment of the firm, made by one partner, is binding on all. A notice to one partner, is a notice to all. A majority of the partners cannot compel the minority to extend their business, or change the business of the firm.

10. The dissolution of a partnership does not affect the liability of the partners for former debts. Partnerships may be dissolved by the assignment of one of the partners. They may be dissolved by the death of one of the partners. It may be stipulated in the articles of copartnership, that in case of the death of one of the partners the business shall be continued, and that the executor or some heir shall take the place of the deceased partner. When a partner dies, the partnership property goes to the survivors, for the purpose of paying the debts. If the survivors carry on the business of the firm, and enter into new transactions with the partnership funds, they do so at their peril, and the representatives of the deceased may demand their share of the partnership property, with interest, or with a proportionate share of the profits. The partnership property is bound for the partnership debts. The right of private creditors of one of the copartners to that partner's interest in the firm, is placed after the right of the partnership creditors.

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made by one partner? If a notice be given to one partner? Can a majority of the partners compel a minority to extend or change the business of the firm?

10. What effect does the dissolution of a partnership have upon the liability of the partners? How may partnerships be dissolved? What may be stipulated in the articles of copartnership? Who may take the place of the deceased partner? When a partner dies, to whom does the partnership property go? If the survivors carry on the business of the firm, and enter into new transactions with the partnership funds? What may the representatives of the deceased demand? For what is the partnership property bound? Where is the right of private creditors of one of the copartners to that partner's interest in the firm placed?

## CHAPTER LXVIII.

## SPECIAL PARTNERSHIPS.

1. THE purpose of a special partnership is to enable a party to put into the stock of a firm a definite sum of money, and receive a share of the profits in proportion to the money invested, and share the loss to the full amount invested, and no more. By the common law, he who has any interest in the stock, or receives any proportion of the profits, is a partner, and, as such, liable for the whole debt of the firm. In special partnerships, the capitalist runs the risk of losing the capital which is earning him a profit, but can lose no more.

2. Partnerships of this kind are authorized and regulated only by statute. These statutes differ in the several States. The provisions are generally to the following effect: 1. There must be one or more general partners, and one or more special partners; 2. The names of the special partners must not appear in the firm; 3. The special partners can exercise none of the powers, nor perform the duties of general partners; 4. The sum proposed to be contributed by the special partner must be actually paid in; 5. The agreement between the partners must be in writing, specifying the names of the partners, amount paid in, etc.; 6. It must be acknowledged before a magistrate, and recorded and advertised in such way as to give the public distinct knowledge of what it is, and who the partners are to whom credit is given. The special part-

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1. What is the purpose of a special partnership? What is the liability, at common law, of every person who has an interest in the stock, or receives a share of the profits? In special partnerships, what risk does the capitalist run?

2. How are partnerships of this kind authorized? Are the statutes the same in each State? What are the general provisions as to partners? Does the name of the special partner appear in the firm? What

ner must, at his own peril, comply strictly with the statute. Any disregard or want of conformity deprives him of the benefit of the statute. He is then a partner at common law, and as such liable for the whole debts of the firm.

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## CHAPTER LXIX.

### ASSIGNMENTS.

1. CHITTY defines *choses* in action to be "rights to receive or recover a debt, or money, or damages for breach of contract, or for a tort connected with contract, but which cannot be enforced without action, and therefore termed *choses*, or things in action." At common law, the transfer or assignment of choses in action was strictly forbidden. The reason given was, that it was a right which could only be enforced by an action at law; and if this be assigned, the only thing that passes is a right to go to law; and so much did the common law abhor litigation, that such assignments were wholly prohibited.

2. In nearly all the States, at the present time, choses in action may be assigned. When the right of action is of such a nature as not to be the subject of a contract, or injury to property, but for a personal injury, it cannot be assigned. This action can only be maintained by the party who has been injured; and when he dies, the right of action dies also. Every right of

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is he prohibited from exercising or performing? Must the sum contributed by the special partner be actually paid in? What must the agreement specify? What further must be done? With what must the special partner strictly comply? What will be the effect of any disregard or want of conformity? What is then his liability?

1. How does Chitty define *choses* in action? What is strictly prohibited at common law? What reason is given? If it be assigned, what passes to the assignor? What does the common law abhor?

2. What is allowed in nearly all the States? If the right of action is of such a nature as not to be the subject of a contract? By whom only can such actions be maintained? If the person in whom is the

action involving life, health, or reputation belongs to this class. So, a right of action founded upon a breach of promise of marriage, being in its nature a personal injury, cannot be assigned. When the injury affects the estate, rather than the person, where the action is for damages to the estate, and not for personal suffering, the right of action may be bought and sold. Such a right of action would pass to the executor, in case of the death of the party injured.

3. The right of action for a personal injury received by collision of cars on a railway, is not assignable. A valid policy of insurance upon one's own life, is assignable. An executor or administrator cannot maintain an action upon an express or implied promise to the deceased, where the damage consists entirely of personal suffering of the deceased, whether mental or corporeal. A servant bound by indenture cannot be assigned to another master, without his consent. The right of dower in a wife, contingent on her surviving her husband, cannot be assigned. The mere right to file a bill in equity for a fraud, cannot be assigned.

4. Assignments of a chose in action may be written or oral. A delivery for a valuable consideration, without writing, is a sufficient assignment. The assignee of a right of action is not bound to show that he gave a valuable consideration for the assignment. The owner may give it away, if he choose, and the donee will have as

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right of action dies? What actions belong to this class? If the right of action be founded upon a breach of promise of marriage? When the injury affects the estate, rather than the person? Would such a right of action pass to an executor?

3. If the right of action be for personal injuries received by collision of cars on a railroad? If the right of action arise from a valid policy of insurance on the life of a person? If a promise to pay be founded on personal suffering, and the payee die, can his executors or administrators recover on such promise? Can the services of a servant or apprentice, bound by indenture, be assigned without the consent of the servant or apprentice? Can a married woman assign her dower contingent upon the death of the husband? Can the right to file a bill in equity for a fraud be assigned?

4. How may assignments of choses in action be made? If delivered

good a right thereto as if he had paid value therefor. Proof of a valuable consideration is only necessary when the rights of third parties are affected by such assignment.

5. The assignee of a chose in action takes it subject to all the offsets and equitable defences existing between the original parties. The action by the assignee is without prejudice to any set-offs or other defences existing at the time of, or before notice of, the assignment. A set-off is a claim due to the defendant from the plaintiff, which defendant claims to have allowed, for the purpose of liquidating a part or the whole of plaintiff's claim. Notice of the assignment must be given to the debtor. The equities must exist at the time of notice. The set-off must be a claim already due at the time of notice. If an account is assigned, and the debtor hold a promissory note of the assignor not already due at the time of the assignment and notice, the debtor cannot set-off such note against the account in an action against him by the assignee.

6. The admissions and declarations of an assignor of a chose in action, made while he is the holder, and before assignment, are evidence against his assignee, and all claiming under him. Admissions made after the assignment are not evidence against the assignee.

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without writing? Can the owner give away a chose in action? When only is proof of payment of a valuable consideration necessary?

5. Subject to what does the assignee take the chose in action? The action of the assignee is without prejudice to what? What is a set-off? To whom must notice of the assignment be given? When must the equities exist? Must the set-off be already due? If an account be assigned, and the debtor hold a note of the assignor not already due, can the debtor set-off such note?

6. If the assignor made admissions while he was the holder, and before assignment? If made after the assignment?



## CHAPTER LXX.

## THE LAW OF BAILMENT.

**1.** BAILMENT is the delivery of property by one person to another person, in trust for some special purpose. There is a contract, express or implied, to conform to the purposes of the trust. The person delivering the property, is the *bailor*. The person to whom the property is delivered, is the *bailee*. Bailment is usually divided into five classes. The first class of bailment is the simple delivery of goods by the bailor to the bailee, to be kept by the bailee, and returned to the bailor without recompense. If the bailor deposit or leave in the care of the bailee his watch or his money, for safe-keeping, to be kept by the bailee without reward, and to be returned to the bailor when called for, such transaction would come under this class. It is generally designated in our law-books by the Latin word *depositum*—translated, *deposit*.

**2.** The second class of bailment is where the bailor delivers goods to the bailee, and the bailee, without reward, undertakes to carry them, or to do some other act with them. This class does not differ materially from the first class. The duties and liabilities arising out of both are nearly the same. This class is distinguished in our law-books by the Latin word *mandatum*—translated, *a commission without reward*. The third class of bailment is

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**1.** What is bailment? What is the purport of the contract of bailment? What is the person delivering the property called? The person to whom the property is delivered? Into how many classes is bailment divided? What is the first class? If a bailor leave with the bailee his watch or his money for safe-keeping, to be kept by the bailee without reward? By what term is it generally designated in our law-books?

**2.** What is the second class of bailment? Does this class differ materially from the first class? What are the same in both? By what

where the bailor delivers property to the bailee, to be used by the bailee, without charge, for a certain time, and then returned to the bailor; as when the bailor loans his horse and carriage to the bailee, to go to a certain place and return, without paying any thing for the use thereof. This class of bailment is called *commodatum*, an accommodation.

3. The fourth class of bailment is where the bailor delivers property to the bailee in pledge for the payment of a debt, in the nature of a collateral security. This class of bailment is called *pignori acceptum*—translated, *received in pledge*. The fifth class of bailment is where the bailor delivers property to the bailee for some special purpose or service, for which a reward is to be paid by the bailor or by the bailee. If the bailor let his horse and carriage to the bailee, to go a certain journey, the bailee pays a reward for the use of the horse and carriage. If the bailor deliver goods to the bailee, to be stored by the bailee, the bailor pays a reward for the storage. If the bailor deliver cloth to a bailee, who is a tailor, to have some labor and services performed upon the cloth, the bailor pays a reward for such labor and services rendered. If the bailor deliver goods to the bailee for transportation from one place to another, the bailor pays to the bailee a reward for such services, including the insurance of such goods against accident until they arrive at their place of destination.

4. The degree of *care* and *diligence* on the part of the bailee in conforming to the objects of the trust, is materially varied by the consideration received. Care and dili-

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term designated? What is the third class of bailment? Give an example. What is this class of bailment called?

3. What is the fourth class of bailment? What is this class of bailment called? What is the fifth class of bailment? If the bailor let his horse and carriage to the bailee, to go a certain journey? If the bailor deliver goods to the bailee to be stored? If the bailor deliver to the bailee cloth, to have some labor or service performed upon the same? If the bailor deliver goods to the bailee for transportation?

4. By what is the degree of care and diligence, on the part of the

gence is *ordinary* or *extraordinary*. Negligence is *slight* or *gross*.

*Ordinary care and diligence* is that which every person of common prudence, and capable of governing a family, exercises in his own affairs.

*Extraordinary care and diligence* is that which the most circumspect and thoughtful persons use in securing their own goods and chattels.

*Slight negligence* is the want of extraordinary diligence.

*Gross negligence* is the want of ordinary diligence.

The question whether the bailee has exercised due diligence, or is guilty of negligence, is always a question to be decided by the jury on the evidence produced before them. In the first two classes of bailment the bailor receives all the benefit, and the bailee receives no reward, but the bailee is required to use ordinary care and diligence in performing the services he undertakes. If he does not, he is guilty of gross negligence, and liable for any loss sustained. The bailee is not bound by any agreement to undertake such trust as comes within the first and second classes of bailment, at a future time; but if he receives the goods into his custody, he assumes the responsibility of executing the trust according to the terms of his agreement.

5. In the third class of bailment, the bailee receives all the benefit, and the bailor receives no reward for the use of his property. In this case the bailee is required to exercise extraordinary care and diligence, and he is respon-

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bailee, to be varied? What two classes of care? What two classes of negligence? What is ordinary care and diligence? What is extraordinary care and diligence? What is slight negligence? What is gross negligence? By whom is the question, whether the bailee has exercised due diligence, to be decided? On what? In the first two classes of bailment, who receives the benefit? What degree of care and diligence must the bailee, in this case, use? If he does not, of what is he guilty? For what is he liable? Is the bailee bound by an agreement to undertake such trust at a future time? If he receives the goods into his custody, what does he assume?

5. Who receives the benefit in the third class of bailment? Does the bailor receive any reward? What class of diligence is the bailee, in this case, required to exercise? For what is he responsible? If he use the

sible for all damages, if guilty of slight negligence. If he uses the property for any other purpose than that for which it was borrowed, he is liable for all accidents which happen to it, and for the hire thereof. In the fourth and fifth classes of bailment the benefit is mutual. The bailor is required to use ordinary diligence only in these cases except the bailment of goods for transportation, in which case he is an insurer, as well as the bailee. When the bailor lets his horse and carriage to the bailee for a journey, the bailee is responsible for gross negligence. If the bailor deposit his goods with the bailee on storage, the bailee is required to exercise ordinary care and diligence in the protection and preservation of the property, and is responsible for gross negligence.

6. If the bailor leave cloth with the bailee to be made into clothes, or if logs be left with the bailee to be sawed into boards, the bailee is liable for gross negligence. In these cases there is an implied contract that the work shall be done in a workmanlike manner. The bailee of goods received for transportation is liable for all losses, except the losses caused—1. By inevitable accident; 2. By public enemies; 3. By the bailor himself.

7. All persons who are competent to make other contracts may become parties to the contract of bailment. If goods be delivered to an infant bailee, although there is no contract of bailment, as in the case of adults, yet if he injure the property by some act of fraud or violence he is responsible. If a person be of unsound mind, this disability must be established by evidence. If a person find

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property for another purpose than that for which it was borrowed? In the fourth and fifth classes of bailment, where is the benefit? What degree of care and diligence is the bailee required to use? If he be a bailee for transportation? When the bailor lets his horse to the bailee for a journey, for what is the bailee responsible? If the bailor deposit his goods with the bailee on storage?

6. If the bailor leave cloth with the bailee, for what is the bailee responsible? In this case, what implied contract is there? For what is the bailee of goods received for transportation liable?

7. Who are competent to make the contract of bailment? If goods be delivered to an infant, and the infant injures the property by some act

an article, and take it into his possession, he becomes a bailee, so as to render himself responsible for gross negligence.

8. In every contract there must be a good consideration. The consideration must be either a benefit to the party promising, or some trouble or prejudice to the party to whom the promise is made. When the bailor deposits with or intrusts his property in the hands of the bailee, to be held or carried without reward, the law raises the presumption of a sufficient consideration for his faithful discharge of the trust. When money is deposited in the bank in the ordinary course of business, it does not create a contract of bailment.

9. When the question is submitted to the jury, whether the bailee has used ordinary care and diligence in the preservation of the property, they would require stronger proof where the bailor pays for the storage, than where the bailee has received and taken care of the goods without reward. The fact that the bailee receives a reward binds him to a diligence beyond that of a bailee without reward. The bailee who is a borrower, and receives the use of a chattel without rendering any compensation for it, is bound to use the highest possible degree of care and diligence.

10. The rule that ordinary diligence in the care and protection of the property intrusted to the bailee is required in all cases, is fixed and immutable, but the subject mat-

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of fraud or violence? If a person be of unsound mind? If a person find an article?

8. What must exist in every contract? What must the consideration be? When the bailment comes within the first and second classes, what is the consideration? When money is deposited in a bank for safe-keeping, does this create a contract of bailment?

9. When the question is submitted to the jury, whether the bailee has used ordinary care and diligence in the preservation of property, what degree of proof will they require in case of storage, as compared with the receipt of goods without reward? What effect does receiving the reward have? What effect does receiving property for use without pay have?

10. Is ordinary diligence required in all cases of bailment, on the part of the bailee? Is the subject-matter upon which the rule acts, the same

ter upon which it acts, changes with the execution of each contract. What would be ordinary diligence in taking care of iron, would not be sufficient in the custody and preservation of gold. The jury must inquire into the nature of the property, and the extent of care ordinarily exercised by persons of common prudence, and capable of governing a family, in the preservation of the like kind of property.

11. When the bailor delivers horses and cattle to the bailee for pasturage for a compensation, the bailee is not responsible if they are stolen from the pasture. But if the bailee leave the bars or gates of the pasture open, and in consequence of his neglect they stray and are stolen, he is liable to the bailor for the loss.

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## CHAPTER LXXI.

### RESPONSIBILITY OF BAILEE.

1. By the rules of the common law, every man is responsible for injuries occasioned by his own personal negligence, and for those occasioned by the negligence of those whom the law denominates his servants, while engaged in the business for which he employed them. When the owner of a carriage hires of a stable-keeper a pair of horses, and the owner of the horses provides a driver, through whose negligent driving an injury is done to a third person, it is held that the owner of the carriage is not liable for the injury, because the driver is not his

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in all cases? How illustrated by the care of iron and gold? Into what must the jury inquire?

11. When the bailor delivers horses or cattle to the bailee for pasturage for a compensation, who is responsible if the cattle are stolen?

1. For what injuries is every man responsible, by the rules of the common law? If the owner of a carriage hire of a stable-keeper, a pair of horses to draw his carriage, and the stable-keeper furnish a driver, through whose negligent driving an injury is done to a third party, who

servant. The owner of the horses, who employs and sends his servant to drive them, is liable for all injuries occurring through his neglect. The driver is his servant, though not under his immediate superintendence. It is not necessary that the servant be employed by the bailee in person, or that he should be under the master's immediate and personal superintendence, in order to render him liable for injuries caused by his servant's neglect.

2. The bailee is held liable for the acts of his servants, on the ground that the servant is supposed to act under the direction of his employer. The employer is not liable to a servant for an injury sustained through the negligence of a fellow-servant engaged in the same employment. The bailee is not liable for the wilful acts of his servant, done without his direction or consent, and in his absence. But he is liable for the negligence of his servant acting in his employ. In order to charge the master, it must be shown that the relation of master and servant existed in that particular affair. A careless act of the servant, is the act of the master. The master is answerable for the servant's negligence and want of skill, but he is not answerable for his wilful injuries.

3. The bailee of a chattel for hire must use ordinary diligence in taking care of it. If a hired horse be taken ill, and the bailee call in a farrier, he is not answerable for any mistake which the farrier may commit in the treatment of the horse; but if the bailee or his servant attempt to prescribe for the horse, and from want of skill gives him medicine which causes his death, though he act

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is responsible for such injury? Why? Is it necessary that the servant be under the immediate superintendence of the master?

2. On what ground is the bailee held liable for the acts of his servants? Is the employer liable to a servant for an injury sustained through the negligence of a fellow-servant engaged in the same employment? For what acts of the servant is the bailee not liable? In order to charge the master, what must be shown? Whose is the careless act of the servant? For what acts is the master answerable, and for what not answerable?

3. In what must the bailee for hire use ordinary diligence? If a hired horse be taken ill, and the bailee call in a farrier? If the bailee or his

in good faith, he will be guilty of gross negligence, and liable to pay for the horse.

4. When an action is brought against the bailee for an injury sustained by the bailee's negligence, the burden of proof is upon the bailor, to show that the injury occurred through the bailee's neglect. But when the bailee returns the hired property in a damaged condition, and refuses or fails, at the time or subsequently, to give any account of the manner the injury occurred, negligence will be presumed on his part, and the burden of proof will be upon him to show a want of negligence. The degree of care required by law varies according to the nature of the property hired, and the circumstances in which it is placed; but it is measured always by that diligence which, under the circumstances, a man of ordinary prudence and discretion would exercise in reference to the same kind of property if it were his own.

5. The burden of proof lies upon the party alleging a fact, which he must establish by evidence on the trial of an action. If the bailor allege that the injury or loss of his property occurred through the negligence of the bailee for hire, he is bound to prove this fact by evidence. It is not enough for him to prove a loss, but he must show that it was caused by the negligence of the bailee. The bailee is presumed to exercise due care and diligence until the contrary be proved, unless he has neglected or refused to give an account of the injury or loss of the property.

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servant attempt to prescribe for the horse, and, for want of skill, give him medicine which causes his death?

4. When an action is brought against the bailee for an injury caused by the bailee's negligence, upon whom is the burden of proof? If the bailee returned the hired property in a damaged condition, and refused or failed to give any account of the manner the injury occurred? How does the degree of care required by law vary? By what is it always measured?

5. Upon whom does the burden of proof lie? If the bailor allege that the injury or loss of his property occurred through the negligence of the bailee for hire? What is not enough for him to prove? What is the bailee presumed to have done, until the contrary be proved? If he has refused or neglected to give any information of the cause of the loss or injury?



6. The bailee for hire is bound to confine himself to the use for which he stipulated. If the bailee hire a horse, he is bound to ride it as moderately, and treat it as carefully, as any man of common discretion would treat his own horse. If through his negligence, as by leaving the door of his stable open at night, the horse be stolen, he must answer for the loss. If he be robbed of the horse by a highway robber he is not responsible, unless by his imprudence he gave occasion to the robbery, as by travelling at unusual hours, or by taking an unusual road. If the bailee hire horses and carriage, and the owner send a coachman, the bailee is discharged from all attention to the horses, and he is then required only to take ordinary care of the inside of the carriage while he sits in it.

7. If the bailee hire a horse for a particular service, or for a particular journey, or for a particular time, he is bound to use the horse for that particular service or journey, and no other, and to return him at the expiration of the time stipulated. If he put the horse into some other service, or perform some other journey, or detain the horse beyond the time stipulated, it is an unlawful use of the horse, and the bailee renders himself liable for all accidents which may happen to the horse. The contract is terminated by the loss of the thing bailed.

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6. To what is the bailee for hire bound to confine himself? If the bailee hire a horse, what is he bound to do? If through his negligence the horse is stolen? If he be robbed of the horse by a highway robber? If the bailee hire horses and carriage, and the owner send a coachman?

7. If the bailee hire a horse for a particular service, or for a particular journey, or for a particular time? If he put the horse into some other service, or perform some other journey, or detain the horse beyond the time stipulated? If the horse die, or the thing bailed be lost?

## CHAPTER LXXII.

## INNKEEPERS AND THEIR GUESTS.

1. PERSONS entertained at a hotel as travellers, are deemed guests. If the innkeeper invite a person to his house as a friend, he does not become a guest, so as to create any responsibility on the part of the innkeeper, because he does not receive him in that capacity. If the traveller leave his horse or baggage at an inn, and go out to dine or lodge with a friend, the rights and liabilities of the parties remain the same as though the traveller had not left the inn. If the guest leave the hotel, and go to another town, intending to be absent two or three days, the same rule applies, so far as relates to the property for the care and keeping of which the host is to receive a compensation. If property be left at the hotel for which the host receives no advantage, and during such absence of the guest the property be stolen, the host will not be answerable. If the guest retain his room, so as to be chargeable for it, he may be considered a guest, even when he leaves at the hotel only inanimate property.

2. It is not necessary that the property of the guest be placed in the special keeping of the host, in order to make him liable, unless required by statute. The host is responsible for the property of his guest committed to his

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1. Who are guests? If the innkeeper invite a person to his house as a friend, does he become a guest? Why not? If a traveller leave his horse or baggage at a hotel, and go out to dine? If the guest leave the hotel, and go to another town, intending to be absent two or three days? If property be left at the hotel for which the host receives no advantage, and during the absence of the guest the property is stolen? If the guest retain his room, so as to be chargeable for it?

2. Is it necessary that the property be placed in the special keeping of the host, in order to make him liable? When is the host responsible for the property of his guest committed to his care? What is the host,

re, unless the loss of it is caused by—1. Inevitable accident; 2. The common enemy; 3. By the neglect or default of the guest. By statute, in most of the States, the host is allowed to provide a safe, or other convenient place for the safe keeping of money, jewels, or ornaments belonging to his guests, and to post a notice to that effect, in a conspicuous manner, in the rooms occupied by his guests. If such goods are not deposited therein by the guest, he is absolved from all liability for such articles, in case of loss by theft or otherwise. The posting of this notice is notice to the guest. He is required to deliver his money, jewels, and ornaments to the proprietor of the hotel, to be deposited in the safe, if he intend to hold the hotel liable for their safety.

3. If a guest deliver his horse to the host, and request that it be put to pasture, which is done, if the horse be stolen, the host is not responsible. The host is not at liberty to refuse to receive a guest, for whom he has accommodations. If, having room for him, he refuse to receive a guest, without reasonable ground for his refusal, on a false pretence that his house is full, he will be liable to an action. If the guest applying for accommodations is intoxicated, or behave in an indecent manner, the host is not bound to receive him. The host does not undertake absolutely to receive as guests all persons who apply; but only those who are capable of paying a compensation adequate to the accommodations provided. He has a right to demand payment in advance.

4. The law gives the host a lien on the baggage of his

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host of the States, allowed by statute to do? What notice does he post in the rooms of his guests? If such goods are not deposited with the guest by the guest?

5. If a guest deliver his horse to the host, and request that it be put to pasture? Can the host refuse to receive a guest, for whom he has accommodations, without a reasonable cause? If, having room, he refuse to receive a guest, without reasonable grounds for his refusal, or on the false pretence that his house is full? If the guest applying for accommodations be intoxicated, or behave in a disorderly manner? Whom does the host undertake to receive as guests? When may he demand payment?

guest, for his reasonable charges. The host is obliged to accommodate the guest, and is responsible for the safety of his baggage; and on account of this extraordinary liability, the law gives the host a right to charge a reasonable compensation therefor, and gives him a lien on the goods and baggage of the guest for the satisfaction of his reasonable charges.

5. In some of the States, parties may be witnesses for themselves. In other States, no person is competent to give evidence in a case in which he has the least pecuniary interest. In all the States, however, in an action by the guest against the host for the loss of baggage, the guest is received as a witness to show the character and value of the property lost, so far as it is personal baggage. He is considered a competent witness from the necessity of the case, and in order to prevent a failure of justice.

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## CHAPTER LXXIII.

### COMMON CARRIERS.

1. To constitute a person a common carrier, he must be one who, as a regular business, undertakes, for hire, to transport the goods of such as choose to employ him. His employment must be to carry goods generally, for any one, so as to imply a public engagement to serve all persons alike, on being paid a reasonable reward. The practice of carrying, for hire, parcels not belonging to

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4. For what does the law give the host a lien on the baggage or goods of the guest? What is the host obliged to do? For what is he responsible? On account of this liability, what does the law give the host?

5. What is the rule of law in some of the States as to parties being witnesses in their own behalf? What is the rule in other States? What is the rule in all the States when a guest brings an action against the host for baggage lost or stolen? Upon what ground?

1. Who is a common carrier? What must his employment be? In what are the proprietors of stage-coaches common carriers?

passengers, in a stage-coach, constitutes the proprietors of the coach common carriers.

2. In order to give due security to property, the law imposes upon the common carrier the responsibility of an insurer. The law makes the common carrier responsible in all cases, except where the loss of the property was caused—1. By inevitable accident; 2. By public enemies; 3. By the act of the owner of the goods. The common carrier is responsible for all losses occasioned by theft or robbery, on account of the opportunity he has for collusion with thieves and robbers, to the injury of commerce. He is entitled to demand a compensation for his services, in proportion to the risk.

3. Common carriers of passengers are liable, as insurers, for the safety of the baggage of the passengers, and nothing will relieve them from their liability except the causes which will relieve common carriers of goods. Common carriers of passengers are not liable to respond in damages, in case of accident, *if they have done all that human foresight and care could do to insure the safety of the passengers.* The carrier of passengers is not strictly a common carrier, in the light of an insurer of the safety of the passengers. For the goods and baggage which he receives for transportation, he is placed on the footing of a common carrier of goods, but he does not absolutely warrant the safety of the passengers. The master of a vessel comes within the description of a common carrier.

4. The common carrier stands in the situation of a public servant, and as such is liable to an action for refusing

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2. What responsibility does the law impose on a common carrier? In what cases is he responsible for the loss of property carried by him? On what account is he made responsible for all losses by theft or robbery? What compensation is he entitled to demand?

3. For what are common carriers of passengers liable as insurers? What will relieve them from this responsibility? When are common carriers of passengers not liable to respond in damages in case of accident? Does the carrier of passengers insure the safety of the passengers in the light that a common carrier insures the goods he carries? What does he insure? Within what description does the master of a vessel come?

to take charge of goods for carriage, if the freight be tendered him, and he has the ability to carry the same. The goods must be brought to him at a reasonable time. They must be in a suitable condition for transportation. They must be of the kind the carrier is accustomed to receive for transportation. The liability of the common carrier does not begin until the goods are delivered to him.

5. Inevitable accident is something that cannot be prevented by human care, skill, and foresight. A sudden gust of wind, by which a vessel passing a drawbridge was driven against a pier, and upset by the violence of the shock, was adjudged to be an inevitable accident. So where a vessel was floating up the Hudson River against a light and variable wind, and being near the shore while changing her tack, the wind suddenly failed, in consequence of which she ran aground and sank; it was held that the sudden failure of the wind was an inevitable accident, which could not have been prevented or avoided by human care, skill, and foresight, and excused the master from liability. Inevitable accident is sometimes termed the act of God, or *vis divina*, or *vis major*.

6. The freezing of a river excuses the delay of the common carrier by water; but he is bound to exercise ordinary care and prudence in anticipating such obstruction. He must use the proper means to overcome obstructions, and exercise due diligence in completing the transportation as soon as the obstruction is removed. In the mean time, he must take vigilant care of the property. Where the injury or loss proceeds directly from natural causes,

4. In what situation does the common carrier stand? As such, for what is he liable to an action? When must the goods be brought to him? In what condition? Of what kind? When does his liability commence?

5. What is inevitable accident? Give the case of a vessel passing a drawbridge. Give the case of a vessel beating up the Hudson River. What is inevitable accident sometimes termed?

6. Does the freezing of a river excuse the delay of a common carrier by water? What is he bound to exercise? In case of such obstruction,

it cannot be attributed to inevitable accident in any case where it might have been avoided by human prudence and foresight. If the goods are destroyed by inevitable accident, the owner loses the goods, and the carrier loses the compensation for carrying the goods. The question, whether the loss or injury was caused by an accident which was inevitable, which human care, prudence, and foresight could not have avoided, is a question of fact for a jury to decide.

7. The common carrier is responsible for all losses caused by fire, except that kindled by lightning, where he has no power to save the property after the bolt has fallen, and before the goods have been burned. Such destruction of property by lightning is the act of God—the *vis divina*, the *vis major*—an inevitable accident. If the country be invaded by a public enemy, and the property be seized, the carrier is not liable for the loss. If the goods are carried upon the high seas, and are there captured by the war-vessels or commissioned privateers of the public enemy, the carrier is not responsible. Rioters, robbers, thieves, and insurrectionists are not classed as public enemies, so as to release the carrier from responsibility for injury or destruction of property caused by them. Pirates are deemed public enemies, and the carrier is not responsible for losses caused by them.

8. The owner is not obliged to disclose the nature of the goods delivered to the carrier, unless inquiry be made by him. If the carrier wishes to ascertain the extent of

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what is he bound to do? Where the injury or loss proceeds directly from natural causes, when can it not be attributed to inevitable accident? If the goods are lost by inevitable accident, who bears the loss of the goods? Who bears the loss of the freight? By whom is the question, whether or not an accident is inevitable, determined?

7. If the loss be by fire? If it be kindled by lightning? If it was in the power of the carrier to save the property after the bolt had fallen? What is the destruction of property by lightning termed? If the country be invaded by a public enemy, and the property in the hands of the carrier be seized? If the goods are carried in ships, when is the carrier excused from responsibility? If it be destroyed by rioters, robbers, thieves, and insurrectionists? If the property be destroyed by pirates?

8. Is the owner obliged to disclose the nature of the goods delivered

the risk assumed by him, he should inquire of the owner at the time the goods are delivered to him for transportation. The carrier has a right to demand from the owner such information as will enable him to decide on what constitutes a fair compensation for his services and risk, and the degree of care he ought to bestow in performing his trust. If the owner refuse to answer, or give a statement which is false in a material point, the carrier will not be responsible for any loss, unless occasioned by his negligence or misconduct. The carrier can never exonerate himself from the consequences of his own neglect or misconduct.

9. Common carriers may, by a special contract, limit their common-law liability, as insurers. If the carrier, on ascertaining the nature and character of the goods, gives notice to the owner that he will not be responsible for loss or damage to the goods, unless a higher than the ordinary rate of insurance be paid for the carriage, he receives them on the terms of such notice, which amounts to a special contract. He is, however, bound to take ordinary care, and exercise ordinary diligence in their transportation. The carrier cannot, in general, change his character as insurer by any act of his own, unless agreed to by the other party. The Supreme Court of the United States hold, "that the common carrier may, by special contract, restrict his common-law obligations, but that he cannot do this by any act of his own. He is in the exercise of a sort of public office, and has public duties to perform, from which he should not be permitted to ex-

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to the carrier? Has the carrier a right to demand such information? If the goods are of great value, has he a right to demand an additional rate of compensation for his additional risk? If the owner refuse to answer or give a false statement in a material point? From what can the carrier never exonerate himself?

9. How may common carriers limit their common-law liability as insurers? If the carrier, on ascertaining the nature and character of the goods, gives notice to the owner that he will not be responsible for the goods unless a higher than the ordinary rate of insurance be paid? What is he still bound to do? Can the carrier change his character as insurer without the consent of the other party? What does the Supreme Court



onerate himself without the assent of the other party. This is not to be inferred from a general notice to the public, limiting his obligations, which may or may not be assented to. He is bound to receive and carry all the goods offered for transportation, subject to all the responsibilities incident to his employment, and is liable to an action in case of refusal. If any implication is to be indulged from the delivery of the goods under a general notice, it is as strong that the owner intended to insist upon his rights and the duties of the carrier, as it is that he assented to their qualification. The burden of proof lies on the carrier, and nothing short of an express stipulation should be permitted to discharge him from duties which the law has annexed to his employment. The exemption from these duties should not depend upon implication or inference, founded on doubtful and conflicting evidence, but should be specific and certain, leaving no room for controversy between the parties."

10. The law is settled, that the carrier cannot screen himself from liability by a general notice. He cannot, by any mere act of his own, limit his responsibility at common law. At most, the notice is to be regarded as only a proposal of terms, which must be accepted in order to constitute a contract between the parties. Silence is not an acceptance of the terms of such a notice, as it would be if the carrier was at liberty to reject or receive the goods for carriage. A bill of lading partakes of a two-fold character. It is a receipt and a contract. It is a receipt for the goods put on board, and a contract to deliver

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of the United States hold on this subject? In what position is the common carrier? Can the consent of the other party be inferred from a general notice? What does the court say the carrier is bound to do? To what is he subject? If there is any implication from the delivery of the goods under a general notice, what is that implication? Upon whom is the burden of proof to establish a special contract? What alone will discharge him from his common-law liability? Upon what should such exemption in no case be founded?

10. What rule of law is settled? As what is the notice at most to be regarded? Is silence on the part of the owner an acceptance? Of what does a bill of lading partake? In what is it a receipt? In what is it a

the same to a certain party at a certain place. So far as it is a receipt, it is open to explanation. As a contract, it cannot be varied by parol testimony. The freight is earned on the delivery of the cargo at the place of destination. No freight is due for goods which perish by the perils of the sea, during the course of the voyage. If the vessel is driven by the perils of the sea into an intermediate port, and is unable to proceed to her port of destination, and the goods are received at the intermediate port by the owner, freight, *pro rata itineris*, for so much of the voyage as has been completed, is due for the goods so received.

11. The undertaking of the carrier extends to the termination of his route, where the goods are marked for a more distant termination, and continues until he has delivered them safely to another responsible carrier. The carrier is responsible for the acts of all persons employed by him to do the work he has undertaken. The carrier's liability extends to the delivery of the goods to the consignee; or where such delivery is not to be made, until notice of the arrival of the goods is given. The carrier may, however, show that it is his usual custom to leave goods at his usual stopping-places, in the towns to which they are directed, without notice to the consignee. If such custom be shown to be of such long continuance, uniformity, and notoriety, as to justify a jury in finding that such custom was known to the consignee, the liability of the carrier will only extend to the delivery at that place. The vendor, consignor, or his agent, may make a demand on the person having the goods in charge, before the transit is ended, for the delivery of goods; or the demand may be made on the principal whose servant has

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contract? Is it open to explanation? When is the freight earned? When is no freight due? If the vessel is driven by the perils of the sea into an intermediate port, and is unable to proceed to her port of destination?

11. If the goods are to be carried to a point more distant than the carrier's route extends, to what point does his undertaking extend? For whose acts is the carrier responsible? How long does the liability of the carrier continue? What custom may the carrier show? When will

**The goods in charge.** This is called stoppage *in transitu*. **If** the demand be made on the principal, it must be made **at** such time, and under such circumstances, that he may, **with** reasonable diligence, prevent the delivery of the **goods**. After such demand or notice, if the carrier or his **servant** deliver the goods to the vendee or consignee, he **renders** himself liable.

12. The common carrier has a lien on the goods transported, for the freight or price of transportation. The lien is on the particular goods carried. Where several kinds of goods are consigned to one person, a part may be delivered, and the residue retained for the whole freight. A lien on goods and chattels, is the right of one man to retain property in his possession belonging to another, until certain claims of the party in possession are satisfied. The lien ceases, when the possession is relinquished. If the property be delivered before the payment of the freight, the delivery, if without fraud, is a release of the lien. If the carrier be induced to deliver the property to the consignee, by a false and fraudulent promise that he will pay the freight as soon as the goods are delivered, the delivery will not be a waiver of the carrier's lien; but he may disaffirm the delivery, and retake the goods. The delivery procured by fraud, is void.

13. As a general rule, where goods have been consigned to an individual, the action for the loss or injury of such goods must be commenced by the consignee. If the

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such custom relieve the carrier from liability, after the delivery at a particular place? What demand may the vendor, consignor, or his agent make upon the carrier? What is this called? If the demand be made on the principal, when and how must it be made? If, after such notice and demand, the carrier deliver the goods to the vendee or consignee?

12. For what has the common carrier a lien on the goods? On what goods? When several kinds of goods are consigned to one person? What is a lien? When does the lien cease? If the property be delivered before payment of freight? If the carrier be induced to deliver the goods by a false and fraudulent promise? If the delivery be procured by fraud?

13. Where goods are consigned, in whom is the right of action, as a general rule, against the carrier? If the goods are placed at his absolute dis-

goods are placed at his absolute disposal, the legal presumption is that he is the owner. There is no positive rule which determines who shall sue the common carrier, for the loss or injury to the goods. The presumption of ownership which results from an unqualified consignment, may be rebutted. The owner of the goods is to bring the action. If goods be shipped for the account and risk of the consignee, he paying the freight, and it is so expressed in the invoice and bill of lading, the delivery to the carrier is a delivery to the consignee, and he alone can bring an action against the carrier. The property, by the bill of lading, is vested in the consignee. Where a merchant orders goods to be sent by a carrier, a delivery to a carrier operates as a delivery to the purchaser. The property by delivery vests in the purchaser, and he alone can bring the action. In case the purchaser becomes insolvent, the vendor may stop the goods *in transitu* before they are delivered to the purchaser; and in such case, the vendor would have the right of action against the carrier.

14. In an action against a common carrier, it is necessary to show that the defendant is a common carrier; that goods were delivered to him for carriage to a specified place; that a competent time has elapsed, and they have not been delivered at their place of destination. In case of a total loss, when there is no special contract, the measure of damages to be recovered is the value of the goods at their place of destination, after deducting the

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posal, what is the legal presumption? Is there any positive presumption which determines which party shall sue the common carrier? What presumption may be rebutted? If the owner can be positively identified? If the goods are shipped for the account and risk of the consignee, he paying the freight, and it is so expressed in the invoice and bill of lading, what is the effect of delivery to the carrier? In whom, by the bill of lading, is the property vested? When a merchant orders goods to be sent by a carrier? Who brings the action against the carrier in this case? In case the purchaser becomes insolvent, what may the vendor do? In such case, in whom is the right of action?

14. In an action against a common carrier, what is necessary to show? In case of a total loss, what is the measure of damages? If the goods

**F**reight. If the goods are not totally destroyed, the owner receives damages in proportion to the injury sustained. The damages are to be ascertained by reverting to the price at which goods of the same class and quality were selling in the market, at their place of destination, at the time the goods should have arrived. If a total loss, the measure of damages is such price. If a partial loss, the difference between such price and the value of the goods, in their damaged condition, is the measure of damages. The freight must be deducted in both cases.

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## CHAPTER LXXIV.

### TRANSPORTATION OF STOCK ON RAILROADS.

1. THE transportation of horses, cattle, and other live-stock over railroads, has become an important branch of business. Such business is generally carried on under a special contract, by the terms of which the railroad company furnish cars and locomotive power, and the owner accompanies the train, and takes the entire charge of the stock during the journey. In some cases, the charge is made for the use of the cars and locomotive power only, with an express stipulation that the company will not be responsible for any alleged defect in the carriage, unless complaint is made at the time, nor for any damage sustained in the journey. In such case, the railroad companies are treated as common carriers only so far as they voluntarily become such. When the owner himself, or

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are only partially destroyed? How are the damages to be ascertained? If a total loss? If a partial loss? What must be deducted in both cases?

1. What has become an important branch of business? Under what contract is it generally carried on? What are the terms of the contract? For what is the charge, in some cases, made? With what express stipulation? How far, in such cases, are railroad companies treated as common carriers? When the owner accompanies his stock,

his servants, accompany their stock, there is not a complete delivery of the property into the possession of the railroad company.

2. Railroads, in this country, have become common carriers of merchandise, and are subject to the provisions of the common law applicable to carriers. They must forward goods delivered to them within a reasonable time. If there is no cause for delay, the property must be sent forward immediately. They may change their common-law liability by special contract. When they receive goods under a special contract, their liabilities, with a few exceptions, will be regulated by the terms of such contract. When cattle or horses are delivered into the custody of the company, which has become a common carrier of such property, the company is answerable as a common carrier, unless it has changed its liability by a special contract. If they have made a special contract, exonerating them from all damages that may happen, they are still liable for all damages resulting to the property by their neglect or misconduct. Such contract may release them from all losses incurred by running off the track, or similar accidents; but it does not release them from their own malfeasance, misfeasance, or negligence.

3. The special contract shifts the burden of proof from the company to the owner of the property, and he must prove that the loss was occasioned by the misconduct or neglect of the company. If it is shown that the company

and takes the care of it, is there a complete delivery to the possession of the company?

2. Of what have railroads, in this country, become common carriers? How soon must they forward goods delivered to them? If there is no special cause for delay? How may they change their common-law liability? When they receive goods under a special contract, by what will their liabilities be regulated? When cattle and horses are delivered to a railroad which has become a common carrier of such property, what is its liability? If they have made a special contract, exonerating them from liability for any damages that may happen, for what damages are they still liable? From what losses will such contract release them, and for what will they still be liable?

3. On whom is the burden of proof, where there is a special contract? If it be shown that the company have disobeyed instructions of the

Have disobeyed the instructions of the owner, in respect to the manner of transportation, the burden of proof then lies upon the company, to show that they have not been guilty of negligence, malfeasance, or misfeasance. The company, notwithstanding the special contract, is bound to provide suitable cars; to guard against improper hazard and injury to the property; and to obey special instructions of the owner, in reference to the manner of transportation.

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## CHAPTER LXXV.

### COMMON CARRIERS OF PASSENGERS.

1. A common carrier of passengers is one who holds himself out to the public as ready to receive and carry on his route, for hire, all persons who apply for a passage. He assumes the character by entering upon the business. He enters into an engagement with the public, and is bound to serve all who require his services. The owners of stage-coaches and steamboats, and railroad companies, who hold themselves out as common carriers of passengers, are bound to receive all who require a passage, so long as they have room, if there is no legal excuse for a refusal. The right of passengers is not an unlimited right. It is subject to such regulations as the proprietors may prescribe for the due accommodation of passengers, and for the proper arrangement of their business. The proprietors may consult and provide for their own interest,

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owner in respect to the manner of transportation? What is the company bound to do, notwithstanding their special contract?

1. Who are common carriers of passengers? How does he assume the character? With whom does he enter into an engagement? What are the owners of stage-coaches, steamboats, and railroad companies, who hold themselves out as common carriers, bound to do? Is the right of the passenger an unlimited right? To what is it subject? What may the proprietors consult and provide for? If passengers refuse to

in managing their business. They are not bound to carry passengers who refuse to obey their reasonable regulations. They are not bound to carry those who are guilty of gross and vulgar habits of conduct, or who disturb the other passengers, or whose character is dissolute or suspicious. They are not bound to carry passengers whose object is to interfere with the interests or patronage of the proprietors, so as to make their business less lucrative. They are not bound to receive into their conveyance persons who are intoxicated, or who would disturb the peace of the company.

2. The passenger has a right to the presumption that he is engaged in his lawful calling, and he cannot be subjected to an inquisition into his private affairs. Before he can be rejected, there must appear against him some good and valid reason for his exclusion. The reason must be sufficient to deprive him of the right which he holds in common with all other men. If a person violate the reasonable rules of a railroad company, he may be excluded from the depot. In order to secure the quiet and safety of travellers, the proprietors of stages, steamboats, railroads, and hotels are invested with the right of preserving peace and order in the conveyances and grounds used by them in the transaction of their business. This right may be enforced by the exercise of a reasonable and proper authority, reposed in them by law.

3. The common carrier of passengers, like the common carrier of goods, has a right to demand payment of fare

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obey their reasonable regulations? If they are guilty of gross and vulgar habits of conduct? If they disturb the other passengers? If their character is dissolute or suspicious? If the passenger's object is to interfere with the patronage of the carrier? If the applicant be intoxicated, or would disturb the peace of the passengers?

2. To what presumption has the passenger a right? To what can he not be subjected? Before he can be rejected, what must appear against him? For what must the reason be sufficient? If a person violate the reasonable rules of the company? In order to secure the quiet and safety of travellers, with what right are the proprietors of stage-coaches, steamboats, and railroads invested? How may this right be enforced?

3. When may the carrier of passengers demand his fare? If the passenger, at the time of engaging his passage, pay his whole fare, and he is



*in advance, as a condition precedent to receiving any person as a passenger. If at the time of engaging his seat in the stage-coach, the passenger pays his fare for the entire journey, the proprietor cannot dispose of his seat to another, even if he is not present when the stage starts, for the passenger may take his seat at any stage of the journey he thinks proper. But if he paid only a part of his fare, and is not ready at the time the stage starts, the proprietor may fill his place. The passenger's fare covers and includes a compensation for the conveyance of the baggage. Under the term baggage is included the ordinary wearing-apparel usually carried by travellers. It does not include merchandise, nor a larger sum of money than is necessary for his journey. It may include articles of ornament and use, such as a watch; and articles of amusement, such as a gun or fishing-tackle.*

4. A check is affixed to each parcel of baggage delivered to a railroad corporation for transportation, and a duplicate thereof delivered to the owner. If upon producing the check at the place of destination, the baggage is not delivered to the passenger, he may maintain an action against the company for such baggage, and may be a witness in his own behalf to prove the contents and value of the baggage. When a passenger refuses to pay his fare, it is lawful for the conductor to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping-place, or near any dwelling-house, on stopping the train.

5. A ticket is usually delivered to passengers on pay-

not ready to leave when the stage starts, can his seat be filled by another? If the passenger pay only a part of the fare? What does the passenger's fare cover and include? What is included in the term baggage? Does it include merchandise? What sum of money does it include? What articles of ornament? What articles of amusement?

4. What is affixed to each parcel of baggage delivered to railroad corporations for transportation? What is delivered to the owner of the baggage? If upon presenting the check at the place of destination the baggage is not delivered? For what purpose may he be a witness in his own behalf? If a passenger refuse to pay his fare, what may the conductor do? At what place?

ment of fare, to be surrendered when called for. This ticket is a species of special contract, usually surrendered near the end of the route. "For this day only" is sometimes printed upon it. When so limited by express terms, it is not good on any other day. If such ticket is presented on any other day, it may be rejected as valueless; and if the passenger refuse to pay his fare, he may be removed from the train. If the passenger engage a seat in a stage-coach for any particular day, he is entitled to his seat on that day and no other. If the fare is not paid in advance, the carrier has a lien on the passenger's baggage for the fare. He may retain the baggage, but he cannot detain the passenger.

6. The carrier of passengers is required to exercise extraordinary care, skill, and foresight, to secure the safety of his passengers. He is liable for the acts and omissions of all persons employed by him within the scope of their employment. They are bound to exercise the same degree of care, skill, and foresight that the master is bound to exercise. If an injury result from the overturning of a stage, the true inquiry is, whether the injury has been caused by the want of that utmost care and diligence in the carrier and his servants which the law requires. Evidence which shows the want of such care and diligence is sufficient to establish the liability of the carrier. The carrier of passengers is bound to provide safe vehicles for the transportation of passengers; and in case of an injury, it lies with him to show that his coach was as sound and

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5. What is usually delivered to each passenger on payment of fare? What is the nature of this contract? Where to be surrendered? If given "for this day only," is it good for any other day? If such ticket be presented on any other day? If the passenger refuse to pay his fare? If a passenger engage a seat in a stage-coach on any particular day? If the fare is not paid in advance, what lien has the carrier? Can he retain the baggage? Can he detain the passenger?

6. What is the carrier of passengers required to exercise? For whose acts and omissions is he liable? What are his employees bound to do? If an injury result from the overturning of a stage, what is the true inquiry? If the evidence shows a want of such care and diligence? What is the carrier of passengers bound to provide? If an injury oc-

good as could be made, and that it was free from defects of every kind. The proprietor of a coach is liable for all defects in his vehicle, which can be seen at the time of construction, as well as for such as may exist afterwards. He is liable, when the injury has been occasioned by an original defect of construction, which cannot be seen without taking off the iron from the wood-work of the axletree. There is an implied warranty on the part of the carrier of passengers that the coaches used by him are safe and sufficient for the journey. If the harness fails, or the coach is broken or overturned, negligence is always implied on the part of the carrier. To release himself from responsibility, he must rebut this presumption. He must show that the accident was such as could not be anticipated or provided against by human skill and foresight.

7. Railroad companies are under the same obligation to provide safe and secure cars, with engines and machinery in perfect order. Any defect in these is negligence on the part of the carrier. As rail-cars and steamboats take the place of stage-coaches, they are placed on the same footing. There is no difference in the care and diligence required on the part of railroad companies and the proprietors of stage coaches. When a collision of two trains happens on the same road, there is a strong presumption that the company has been guilty of a want of due care, either in the construction of their road or in running their trains upon it. The company is bound to keep the

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cars, with whom does it lay to show that the coach was free from defects? For what defects in his vehicle is the proprietor of a stage-coach liable? If the injury was caused by an original defect of construction, which cannot be seen without taking off the iron from the wood-work of the axletree? What is the implied warranty on the part of the carrier of passengers, as to the coach used by him? If the harness fails, or the coach is broken or overturned, what is always implied on the part of the carrier? What must he do to release himself from responsibility? What must he show?

7. Under what obligations are railroad companies, as to cars and engines? If there is any defect in these? Of what do rail-cars and steamboats take the place? Is there any difference in the degree of care, skill, and diligence required on the part of railroad companies and proprietors of stage-coaches? When a collision of two trains happens on the same

road in good repair and running order. In an action against the carrier of passengers, the jury are to find from positive evidence—1. That the injury complained of was caused solely by the negligence and want of care of the defendant or his servants; 2. That no fault of the plaintiff contributed to produce the injury.

8. By the printed regulations of most of the railroad companies, passengers are forbidden to stand on the platform, or to ride in the baggage-car. If an accident happens through the disobedience of this rule, the carrier is not liable. But if a collision occurs, and such passenger is injured by such collision, and his riding in the baggage-car did not contribute to produce the injury, the company is liable. When a passenger is injured by the fault of an agent or servant of the company, the company is liable; but if a servant is injured through the fault of a fellow-servant, the company is not responsible. If the injury to the servant can be traced to the negligence or misconduct of the company, the company is liable.

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## CHAPTER LXXVI.

### THE LAW OF THE ROAD.

1. It is the duty of the carrier of passengers, and of all other travellers upon the highways, to observe the established usage or law of the road, in passing other teams.

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road, of what is there a strong presumption? What is the duty of the company, as to the road? In an action against the carrier of passengers, what are the jury to find from positive evidence?

8. What are passengers forbidden, by the printed regulations of railroad companies, to do? If an accident happen, through disobedience to this rule? If a collision occur, and such passenger is injured by such collision, and his riding in the baggage-car, or on the platform, did not contribute to produce the injury? When a passenger is injured by the fault of a servant of a company? If a servant is injured through the fault of a fellow-servant? If the injury to the servant can be traced to the negligence or misconduct of the company?

land, the custom is to keep to the left, in passing.

United States, the custom is to keep to the right, in

g. At common law, if a carriage coming in any on leave sufficient room for any other carriage to their proper side of the way, it is a sufficient compliance with the law of the road. By the statutes of of the States, whenever any persons travelling in any carriage or other conveyance shall meet on any private road or public highway, the persons so meeting shall seasonably turn their carriages to the right of the centre of the road, so as to permit such carriages to pass without interference or interruption. Each party is to turn to the right of the centre of the road, although it is more difficult for one party to turn out than for the other. This rule is strictly enforced.

It is not the centre of the smooth or most travelled part of the road which is the dividing line, but the centre of the most travelled part, although the whole of the smooth or most travelled part may be upon one side of that centre. If the road is clear, the traveller may go on either side he chooses. Where parties on the road meet suddenly and a collision ensues, the party driving on the wrong side of the road must answer for the damages, unless the other party, by the want of ordinary care, contributed to produce the injury. If the party injured did not exercise ordinary care, and yet did not, by the want of ordinary care, contribute to produce the injury, he may recover.

A carriage passing a foot-passenger may go on either side of the road. A foot-passenger has a right to cross

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What is the duty of the carrier of passengers, and of all others upon the highway? What is the custom in England? What is the custom in the United States? What is a sufficient compliance with the law of the road, according to the common law? What is the law on this subject, in most of the States? To the right of what part of the road is each party to keep? Is this rule strictly enforced? What part of the road is meant by the centre? Where the road is uneven, which side may the traveller go? Where parties on the road meet suddenly, and a collision ensues, and one party is driving on the wrong side of the road? If the party injured did not exercise ordinary care, and yet did not, by the want of it, contribute to produce the injury?

the carriage-road, and a person driving a carriage on it is liable to an action if he does not avoid driving against him. If the person driving the carriage cannot avoid driving against the foot-passenger, because his reins broke, that will be no defence, for he is bound to have a harness of sufficient strength. Where a child, of such tender age as not to possess sufficient discretion to avoid danger, is permitted by his parents to be in a public highway, without any one to guard him, and is there run over by a traveller and injured, no action can be maintained against the traveller, unless the injury arose from culpable negligence on the part of the traveller.

4. When boats meet on canals, it is the duty of the master of each to turn his boat to the right hand, so as to be wholly on the right side of the centre of the canal. This is substantially the law of the road, and in case of collision the right of action depends upon the same principles. If both parties are equally in the wrong, neither can maintain an action against the other. There is no legal injury, where the loss is the result of the common fault of both parties.

5. The carrier of passengers is bound to observe his advertised regulations in respect to stopping for refreshments, rest, or other purposes on the way. The passenger is presumed to take his passage with an understanding, from which the law implies an agreement, entitling him to the accommodations offered.

3. If a carriage passes a foot-passenger? What right has the foot-passenger? When is the person driving a carriage liable to an action by a foot-passenger? If his reins break? If a child of such tender age as not to possess sufficient caution or discretion to avoid danger, is permitted by his parents to be in a public highway, without any one to guard him, and is there run over by a traveller?

4. When boats meet on a canal, what is the duty of the master of each? What law is this, substantially? In case of collision, in which is the right of action? If both are equally in the wrong? When is there no legal injury?

5. What is the carrier of passengers bound to observe? With what understanding is the passenger presumed to take his passage?

## CHAPTER LXXVII.

## TRAVEL ON THE HIGHWAY OF NATIONS.

1. THE general duty of the master of a vessel is to exercise due skill, care, and diligence in the navigation of his vessel. He is to hang out a light of warning, where that is the most appropriate. He must follow the recognized mode of exercising the requisite care. He is bound to keep a vigilant look-out, and to use all proper precaution to avoid and prevent accident.

2. When two vessels are approaching each other, the one which is sailing before the wind, must get out of the way of the one sailing against it. When two vessels are sailing before the wind, having the wind equally free, and the power of readily controlling their vessels, when they approach each other, the vessel on the *larboard* tack must give way. The larboard is the left-hand side of the ship when a person stands with his face towards the prow. The opposite side is called the *starboard* side. The vessel to windward is to keep away, when both are going the same course in a narrow channel, and there is danger of collision. Steam-vessels are bound to keep out of the way of sailing-vessels.

3. The first law which is applicable to all cases, and under all circumstances, is that every vessel shall keep clear of every other vessel, where she has the power to do

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1. What is the general duty of the master of a vessel? What lights is he to hang out? What is he to follow? What is he bound to do?

2. When two vessels are sailing towards each other, one before the wind, and the other against it? When two vessels are sailing before the wind, having the wind equally free? What is the larboard tack? What is the opposite side called? When two vessels are going the same course in a narrow channel, and there is danger of collision? What is the rule as to steam-vessels?

3. What is the first law, applicable to all cases and under all circum-

so, notwithstanding the other may have taken a course not conformable to established usage. We can scarcely imagine a case in which it would be justifiable to persist in a course after it had become evident that a collision would ensue, if by changing such course a collision would be avoided. *The usages of the sea*, which have grown up like the common law, and been from time to time recognized by the courts, must be observed by all nautical men as rules of authority. Whether recognized in the adjudicated cases, or resting merely on oral tradition, the violation of them is evidence of a want of good seamanship, raising a presumption against the vessel violating the usage.

4. The Trinity House regulations are of authority, as recognizing the existing law of usage and custom. The decision of a court is higher evidence, but still only the evidence of what the law is. An accidental collision may happen without blame to either party, as when the collision occurs in a violent storm. In that case, the loss must be borne by the party on whom it happens to fall. A collision may happen where both parties are to blame, as where there has been a want of due diligence on both sides. According to the English and American decisions, if there be fault or want of care on both sides, or if both sides be without fault, neither party can recover against the other. By the Roman law, the loss would be apportioned between the parties. The collision may happen by the misconduct of the party injured. The party upon whom the loss falls, must bear the loss. It

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stances? When is it never justifiable to persist in a course? What must be observed by all nautical men, as rules of authority? Whether these usages are recognized in adjudicated cases, or rest merely on oral tradition, of what is the violation of them evidence?

4. What do the Trinity House regulations recognize? Of what are the decisions of courts evidence? Can a collision happen without the fault of either? In this case, who sustains the loss? If both parties are chargeable with blame, or both are innocent, who are liable in England and America? What was the Roman law in such cases? If the collision happened by the misconduct of the party injured? If the collision happened through the fault of the vessel uninjured?



may be the fault of the vessel uninjured. In this case, the injured party may recover damages from the other party.

5. It is the duty of the master of the vessel to take care that the vessel be "tight, staunch, and seaworthy" at the commencement of each voyage; that she be appropriately furnished with tackle and apparel necessary for her safe navigation. He must sail at the time appointed, and in the manner approved by skilful navigators. He must pursue the direct course of the voyage, without deviation. He must, as far as possible, bring his vessel through the perils of the sea safely into port.

6. For the proper discharge of his difficult duties, it is necessary that the master be a person of experience and practical skill in the art of navigation; that he possess the intellectual and moral power of commanding and governing his vessel; that he be clothed with authority to meet and cope with the dangerous vicissitudes of the voyage, to the best advantage. For this purpose, while at sea, he has something like a dictatorial and autocratic power in the government of passengers, as well as crew, to the end that he may properly control the movements of the vessel.

5. What is the first duty of the master of a vessel? With what must the vessel be furnished? When should he sail? In what manner? What course must he pursue? Through what must he bring his vessel safely?

6. For the purpose of discharging his difficult duties, what knowledge must the master possess? What intellectual and moral power? With what authority is he clothed? What does his power, while at sea, over the passengers and crew, resemble? For what purpose?

## CHAPTER LXXVIII.

## MARINE INSURANCE.

1. INSURANCE is a contract whereby one party, for a stipulated consideration, undertakes to indemnify another party in case of loss by certain risks. The party undertaking to make the indemnity, is called the *insurer*, or underwriter. The party indemnified, is called the *insured*. The stipulated consideration, is called the *premium*. The written contract, is called the *policy of insurance*. There are three kinds of insurance—*fire*, *life*, and *marine* insurance. The contract of fire insurance, is one by which the insurers undertake to indemnify the insured in case of loss or damage by fire to the property covered by the policy, during a prescribed period of time. The contract of life insurance, is one by which the insurers undertake to indemnify the insured in case of the death of the party whose life is the object of insurance, during a prescribed period of time. The contract of marine insurance, is one by which the insurers undertake to indemnify the insured in case of loss, by the perils of the sea, to the property covered by the policy, during a prescribed period of time.

2. The principle of insurance may be thus stated: If one house in every hundred be annually destroyed by fire, the probability of loss will be one per cent. If, therefore, a party wishes to get a house insured, he ought

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1. What is insurance? What is the party undertaking to make the indemnity called? The party indemnified? What is the stipulated consideration called? What is the written contract called? How many kinds of insurance are there? What is the contract of fire insurance? What is the contract of life insurance? What is the contract of marine insurance?

2. How may the principle of insurance be stated? If a party wishes to get a house insured, what annual premium ought he to pay? By

pay an annual premium of one per cent on the amount insured, in addition to such sum as may be required to compensate the insurer for his trouble, and give him a fair profit. Insurances are generally undertaken by insurance companies. The richest and most abundant sources from which the law of insurance, as it now exists, is derived, are the adjudged cases in the reported decisions of the courts of common law in the United States and in England.

1. Marine insurance companies generally insure on the representations of the insured. The most perfect good faith is required in the contract. If the insured make false representations to the company, in order to procure insurance on better terms, it will avoid the contract, though the loss may arise from causes unconnected with the misrepresentations. If there is any concealment on the part of the insured, even if the concealment happens through mistake, neglect, or accident, without any fraudulent intention, it will avoid the contract, for the reason that the insurer was not the less deceived. All persons may be insured, whether citizens or foreigners, except their enemies. A marine policy may be made to some particular individual, or "for whom it may concern."

4. The thing insured must be actually exposed to the risk, and the insurer must receive an equivalent for the chances of loss. Whatever may be liable to injury by the perils of the sea, either in whole or in part, may be insured. Those who have a qualified property, as well as those who have an absolute property, are at liberty to insure it. The mortgagor and mortgagee have each an insurable interest.

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Q. What are insurances generally undertaken? What are the sources from which the law of insurance is derived?

A. On what representations do marine insurance companies insure? What is required in the contract? If the insured make false representations to the company, in order to procure insurance on better terms? If there is any concealment on the part of the insured? Who may be insured? To whom may a marine policy be made?

Q. To what must the thing insured be exposed? What must the insurer receive? What may be the subject of marine insurance? If a person has a qualified property only? If there be a mortgagor and

The insurer has an insurable interest, and may reinsure against the same risk. The insured may make a second or double insurance on the same risk, and in case of loss may sue on both policies. The insurers on the different policies are bound to contribute ratably towards the loss, unless a clause is introduced in the policy, making the insurers responsible in the order of their insurance.

5. There is an *implied* agreement in every contract of marine insurance, on the part of the insured, that the vessel is seaworthy at the commencement of the voyage; that the voyage shall not be changed without the consent of the underwriters; and that the vessel shall be employed and navigated with reasonable skill, and according to law. By seaworthiness, is meant the ability of the ship to make a voyage with probable success and safety. There is an implied agreement on the part of the insured, that at the commencement of the voyage, the ship is tight, staunch, and strong, properly manned, provided with stores, and in all respects fit for the intended voyage. This implied seaworthiness relates only to the commencement of the voyage. If she sail without a competent number of hands to navigate her; or if she be suffered to sail in a river, channel, or other place of difficult navigation, without a pilot properly qualified, the underwriters will be discharged from liability. Whether or not the vessel was seaworthy when she sailed, is a question of fact for the jury.

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mortgagee, which may insure? Has an insurer an insurable interest? Can the insurer make a double insurance on the same risk? In case of loss, which is liable? What are the insurers on the different policies bound to do?

5. What implied agreement is there in every policy of marine insurance, on the part of the insured? What is meant by seaworthiness? What is the implied agreement, on the part of the insured, as to the condition of the vessel at the commencement of the voyage? If she sail without a sufficient number of hands to navigate her? If she sail in a narrow channel, or other place of difficult navigation, without a pilot properly qualified? By whom is the question whether the vessel was seaworthy or not when she sailed, to be determined?

6. The vessel must have her proper documents, to prove her nationality. She must be employed in a lawful voyage, according to the law of nations, municipal law, and particular treaties between the country to which she belongs and other States. The voyage is from the port of departure to the port of final destination. None but a lawful voyage can be insured. If the voyage were illegal, the insurance is void, whether the insurers were informed of the illegality or not.

7. By the voyage is meant the regular and customary track from the port of departure to the port of destination. A deviation from the voyage, unless justifiable, will discharge the underwriters. A deviation from the voyage is—1. A voluntary departure, without necessity or reasonable cause, from the regular and usual course of the voyage insured; 2. Remaining at a place where the ship is allowed to touch, longer than necessary; 3. Doing there what the insured is not authorized to do, as remaining to trade where she is allowed only to touch; 4. Captured and released, and remaining in port to trade. A deviation may be justified—1. By stress of weather; 2. By want of necessary repairs; 3. For the purpose of rendering succor to a ship in distress, with the object of saving life, but not of saving property; 4. For the purpose of avoiding capture or detention, when there is sufficient danger; 5. By the inability of the captain and crew to navigate the ship in safety, from sickness, death, or other cause; but this inability must not arise from the neglect or mismanagement of the owners or master; 6. When the captain departs from his course by compulsion, on account of the mutiny of the crew. The liability of the underwriters ceases at the time of the deviation. If a

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6. What documents must the vessel have? How must she be employed? What is the voyage? What voyage only can be insured? If the voyage were illegal?

7. On what track is the voyage? What is the effect of a deviation from the voyage, if not justifiable? What is a deviation from the voyage? By what may a deviation be justified? When does the liability of the underwriters cease? If a loss occurred before? If after the do-

loss occurs before, they are responsible. If after, they are not. If there be an unnecessary deviation, the underwriters are entitled to retain the whole premium. The slightest unauthorized deviation changes the voyage.

8. The risks usually insured against are those occasioned by storm, shipwreck, jettison, prize, pillage, fire, war, reprisal, detention by foreign governments, collision at sea, whether resulting from accident or negligence. These are called perils of the sea. The insurer may by a special contract limit his responsibility to enumerated risks. No one is permitted to protect himself by insurance—1. Against a loss or damage resulting from his own fault; 2. Against perils of the sea in a voyage prohibited by law; 3. Against risks excluded by the usual memorandum contained in the policy. In marine insurance, the accident must have happened at sea, unless the policy includes other risks. The commencement and end of the risk depends upon the words of the policy. The policy may be on the voyage out, or on the voyage in, or on any part of the voyage, or for a limited time, or from port to port. When the vessel has left her moorings, in complete readiness for sea, and the master has an actual intention of proceeding, she is at sea, or on her passage, within the meaning of the policy. The vessel moving out into the river has not necessarily sailed on her voyage. The intention of sailing decides the point. The voyage does not end until the vessel drops her anchor, or is moored.

9. The policy must be in writing. The names of the parties, insurer and insured, should be inserted. The

violation? If there be unjustifiable deviation, who is entitled to the premium? If there be the slightest unauthorized deviation?

8. What are some of the risks usually insured against? What are these risks called? To what may the insurer limit his responsibility? How? Against what is no one permitted to protect himself by insurance? Where must the accident happen, in marine insurance? Upon what does the commencement and end of the risk depend? Upon what may the policy be? When is a vessel at sea, or on her voyage? If a vessel move out into the river? What must decide the point? When does the voyage end?

9. Must the policy be in writing? What names must be inserted?

policy must contain the name of the vessel insured, and the name of the vessel containing the goods insured. If one vessel is named, and the goods are sent by another, the policy will not cover them. The voyage must be fully described, the time and place at which the risk is to begin, the place of the vessel's departure and her destination, the time when the risk commences and ends, whether the insurance be upon the goods or the vessel. The policy must state all the ports and harbors the vessel is allowed to enter, and load and unload, and the subject of the insurance, whatever it may be. The accidents against which the insurer undertakes to indemnify the insured are distinctly enumerated in the policy. No evidence can be given of any loss, unless it be the immediate consequence of some peril insured against.

10. *Barratry* is fraudulent conduct on the part of the master of the vessel, in his character of master, or of the marines, to the injury of the owner of the vessel or cargo, and without his consent. This is one of the risks usually insured against. Abandonment is the act by which the insured relinquishes to the insurer all the property in the thing insured. The abandonment, when legally made, transfers from the insured to the insurer the property in the thing insured, and obliges him to pay the insured what he promised to pay by the contract of insurance. No particular form is required, nor need it be in writing; but the abandonment must be explicit and absolute, and must set forth the reasons upon which it is founded. It must also be made in a reasonable time after the loss. It may be made in the following cases: 1. Where there is a total loss; 2. Where the voyage is lost, or not worth pursuing, by reason of the perils insured against; 3. If

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Must the name of the vessel be inserted? If one vessel is named, and the goods are sent by another? What must be described as to the voyage? What intermediate ports must be mentioned? As to the enumeration of the accidents insured against?

10. What is *barratry*? Is this one of the risks insured against? What is abandonment? What is the effect of abandonment? Is any particular form of abandonment necessary? What must it be, and what must

the cargo be so damaged as to be of little value; 4. Where the salvage is very high, and the insurer will not engage to bear it; 5. If what is saved is of less value than the freight; 6. Where the damage exceeds one-half of the value of the goods insured; 7. Where the property is captured, or detained by an indefinite embargo. When a loss has occurred, the damages must be ascertained, so that a settlement may be made. This is done by adjustment.

11. An interest policy is where the insured has a substantial interest in the thing insured. A wager policy is founded on an ideal risk, where the insured has no interest in the thing insured. These policies are unlawful. The policy itself is the contract between the parties. Whatever proposals are made between the parties, prior to the issuing of the policy, they are considered as waived, if not inserted in the policy, or contained in a memorandum annexed to it. If from mistake the policy has been so framed that it does not correspond with the original agreement between the parties, the error may be corrected by a court of equity. Although parol evidence is not admissible to contradict or modify, it is admissible to explain what is doubtful.

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it set forth? When? In what cases may it be made? When a loss occurs, how are the damages ascertained?

11. What is an interest policy? What is a wager policy? What policies are unlawful? What is the contract between the parties? When proposals are made, but not entered in the policy, how are they considered? If, from mistake, the policy does not correspond with the original agreement? For what purpose is parol evidence inadmissible? For what purpose admissible?



## CHAPTER LXXIX.

## FIRE INSURANCE.

1. In commercial towns, actions on mere agreements to insure, whether against fire or against the perils of the sea, are not uncommon. They are always sustained whenever it appears that the terms of agreement have been fully settled by the concurrent assent of the parties, so that nothing remains to be done but to deliver the policy. Mere receipts for premiums are very common in the city of New York, and such insurance is effected in the first instance by means of such receipts. The design of them is to give immediate effect to the insurance, or to supply the place of a formal policy until one can be prepared. A receipt of this kind is signed by the president or secretary of the company, and it constitutes, in equity, a valid insurance, and in law a valid agreement to insure. In order to complete the contract of insurance, the minds of the parties must have met. An offer of insurance made by one party to the other by letter, imposes no obligation upon him who makes it, until it is accepted. The doctrine seems to be well settled in this country, that the acceptance of a written proposal for insurance consummates the bargain, provided the offer is pending at the time of its acceptance.

2. Where the proposition is by letter, the usual mode of acceptance is by sending a letter announcing such ac-

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1. Can an action be sustained on an agreement to insure? When are such actions sustained? What are very common in the city of New York? What is the design of these receipts? By whom are they signed? What does this receipt constitute in equity? What does it constitute in law? What is necessary to complete the contract of insurance? Is the offer of insurance by letter binding, until accepted? What consummates such bargain?

2. When the proposition is by letter, what is the usual mode of accept-

ceptance. Where the offer is made by a messenger, the acceptance returned by the messenger, or sent by another, is sufficient. A determination to accept, communicated, or put in a proper way to be communicated to the party making the offer, would doubtless complete the contract. A letter written would not be an acceptance, so long as it remained in the possession or under the control of the writer. An acceptance is the distinct act of one party to the contract, as much as the offer is of the other. In all cases of contracts entered into by parties at a distance by correspondence, it is not possible that both should have a knowledge of it at the moment it became complete. This can only exist where both parties are present.

3. In all cases of fire insurance, the insured must have an interest in the thing insured at the time of the insurance, and at the time of the loss. A mortgagor and mortgagee may both insure the same building. Where the mortgagee insures solely on his own account, it is but an insurance on his debt; and if his debt is afterwards paid or extinguished, the policy ceases to have any operation. If the premises are subsequently destroyed by fire, he has no right to recover, for he has sustained no damage. The mortgagor cannot take advantage of the policy, for he has no interest therein. If the premises are destroyed by fire before any payment of the mortgage, the insurers are bound to pay the amount of the debt to the mortgagee, if it does not exceed the insurance. Upon such payment the insurers are entitled to an assignment of the debt from the mortgagee, and they may recover the same from

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ance? If the offer be made by a messenger? If a letter be written but retained by the writer? Is the acceptance a distinct act of one party? When a contract is entered into at a distance, what is not possible?

3. In fire insurance, when must the insured have an interest in the property insured? What two parties may insure the same building? If the mortgagee insure solely on his own account? If his debt is afterwards paid or extinguished? If the premises are subsequently destroyed by fire? Can the mortgagor take advantage of the policy? If the premises are destroyed by fire before the mortgage is paid? Upon such payment, to what are the insurers entitled? Does the payment of the loss to the mortgagee release the mortgagor? To what extent can the mort-

the mortgagor. The payment of the loss by the insurers does not in such case discharge the mortgagor from the debt, but only changes the creditor. The mortgagee can insure only to the extent of his debt. The mortgagor can insure to the full value of the property, notwithstanding the encumbrance upon it. A tenant from year to year has an insurable interest in the buildings, though he cannot recover the value of the buildings in case of loss by fire. The interest of the insured is merely his right to possess and occupy the premises for the unexpired portion of the year for which they were rented. When a tenant is insured, the actual value of the building for occupation above the rent which he pays is the loss of the insured on its destruction by fire. A common carrier has a special property in goods delivered to him for transportation, and he may insure to the full value of the goods so placed in his hands. Trustees, agents, and consignees, can generally insure the property in their hands.

4. It is generally a condition of the policy, when the same property is insured with several companies, that the insured shall give notice of any other insurance on the same property. One of the objects of the notice is to apprise the insurer of his claim to contribution from his co-insurers. When there is a clause in the insurance, that persons insured at that office must give notice of any insurance made in their behalf at another office, and that they shall cause such other insurance to be indorsed on the policy, unless such notice is given, the insured will not be entitled to recover in case of loss. This condition applies to a subsequent, as well as to a prior insurance.

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gagee insure? To what extent can the mortgagor insure? Has a tenant from year to year an insurable interest? What is his insurable interest? When a tenant is insured and the premises are destroyed, what is the measure of damages he sustains? To what amount may a common carrier insure the goods in his possession? Can trustees, agents, and consignees insure?

4. What special condition is inserted in policies of fire insurance, where insurance is effected in several companies? What is one of the objects of this notice? If such notice is not given according to the terms of the policy? To what insurances does this apply?

5. The contract of insurance is to be construed liberally, and according to the intention of the parties. Whether or not a special commodity, or building, is covered by the policy, must be inferred from the general scope of the policy. It is sufficient, if the description substantially defines the property insured. If property be described as belonging to one class when it belongs to another, for which a larger premium would have been demanded, the policy becomes void. A consignee who receives consignments from several consignors, may insure the property in his own name.

6. It is necessary, in all cases of fire insurance, that the property insured should at the time the liability is incurred be free from the danger insured against. The property must not be on fire, neither must fire be raging in an adjacent spot from which it is probable that it may communicate to the property insured. The insurer is presumed to take the risk on the hypothesis that this property is not exposed to any unusual danger. Damages by fire means damages caused by ignition, or actual combustion, and not merely the excessive heat of a furnace, or other means of communicating heat. When the damage is from lightning without any combustion, it is clearly not within the terms of insurance. The insurance companies are liable for all losses which are the immediate consequences of fire or burning. They are liable where goods are injured by fire-engines in putting out a fire; or by the removal of the goods, although the goods may not have been burnt; or by breaking; or by water in the act of

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5. How is the contract of insurance to be construed? From what must the question, whether a particular building or a special commodity be covered by the insurance, be determined? What description will be sufficient? If property be described as belonging to one class, when it belongs to another for which a larger premium would have been demanded? How may a consignee insure?

6. What must be the condition of the property insured, as to immediate danger? Can property be insured if it is on fire? How is the insurer presumed to take the risk? What is the meaning of damages by fire? If the damage be caused by lightning without ignition? For what losses are insurance companies liable? If goods are injured by fire-

saving them from the fire. The fire in such cases is the proximate cause of the injury, and by a liberal construction of the policy, the goods may be said to have been injured by fire. Where it becomes necessary to blow up a building to arrest the progress of the fire, the insurance company will be held liable for the loss so occasioned.

7. Losses occasioned by the mere fault of the insured or his servants, unaffected by fraud or design, are within the protection of the policy. Losses by the negligence of tenants, and even by incendiaries, are within the protection of the policy. Gross negligence of the assured may, under certain circumstances, amount to a fraudulent loss, and would constitute just ground for rejecting any claim for loss. Gross negligence, if not equivalent to fraud, is inconsistent with good faith. Gross negligence on the part of the insured may be of such a character as to exonerate the insurers; although evidence of a deliberate intention in the insured to set fire to the premises, is not such as would be required to convict him of arson. Mischief arising from the wilful, or even felonious acts of servants or strangers, is a risk within the policy, except where the fire may happen by invasion, insurrection, riot, or usurped power.

8. An *express* warranty, in the law of insurance, is a stipulation inserted in writing on the face of the policy, on the literal truth or fulfilment of which, the validity of the entire contract depends. The policy may so refer to another writing as to make it a part of the policy. When

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gines in putting out the fire? If broken or injured in saving them from being burned? Of what is the fire in such cases the proximate cause? Where it becomes necessary to blow up a building to arrest the progress of the fire?

7. If the loss be effected by the fault of the insured or his servants, unaffected by fraud? If the loss be by the negligence of a tenant? To what may gross negligence amount? With what is gross negligence inconsistent? Would the evidence of gross negligence be sufficient to release the insurers from responsibility, and yet not be sufficient to convict of arson? If caused by the wilful or felonious acts of servants or strangers?

8. What is an express warranty, in the law of insurance? If such warranty be unfulfilled or be untrue? How may another writing be

a policy is clear and explicit, no parol evidence can be admitted to contradict or vary its provisions. An implied warranty necessarily results from the terms of the contract. A misrepresentation renders the contract void, on the ground of fraud. A non-compliance of the warranty, is an express breach of the contract. When a thing is warranted to be of a particular description, it must be as it is represented; otherwise the policy is void, and there is no contract.

9. It is the practice of fire insurance companies to make inquiries of the insured, concerning all matters deemed material to the risk, or which may affect the amount of the premium to be paid. This is sometimes done by annexing the conditions of insurance to the policy. Sometimes the applicant is required to state particular facts, in a written application for insurance. When thus called upon to speak, he is bound to make a true and full representation concerning all the matters brought to his notice. The test of the materiality of a representation is the probable influence made on the mind of the insurers, in their determination to assume the responsibility they would not otherwise have assumed. Materiality of a representation is a matter of fact to be ascertained by a jury. Policies of fire insurance are personal contracts with the insured, and do not pass to the purchaser of the property insured, or to the assignee, without the consent of the insurers. If the insured part with all his interest in the property before the loss happens, the policy is at an end, unless it be assigned to the purchaser. If he retain

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made a part of the policy? What evidence cannot be introduced to contradict or vary the provisions of the policy? What is the effect of a misrepresentation? What effect does the non-compliance of the warranty have? When a thing is warranted to be of a particular description?

9. What inquiries are insurance companies accustomed to make of the insured? What are sometimes annexed to the policy of insurance? What is the applicant sometimes required to state in writing? When thus called upon to speak, what is he bound to do? What is the test of the materiality of a representation? By whom is the materiality of representation to be decided? What kind of contracts are policies of fire insurance? Do they pass to the purchaser of the property insured? If

benefit of heirs or creditors. The insurable interest in the life of another person must be a direct and definite pecuniary interest. A person has not such interest in the life of his wife or child.

2. In New York, by the law of 1840, a wife may either in her own name, or by a trustee, insure her husband's life, free from the claim of his representatives or creditors. If the husband survive the wife, the loss may be payable to the wife's children. A life policy is assignable; and an assignee for value, of a policy effected by the assignor upon his own life, may recover the whole amount insured, without reference to the consideration paid by him for the assignment. It is not necessary that the assignee should have an insurable interest.

3. Applicants for life insurance, as a general rule, are unknown to the officers of the insurance company. The company, therefore, relies upon the statement and representations of the applicant, and his application is placed on file, and is made the basis of the policy of insurance. Good faith is requisite. All concealment or suppression of material facts avoids the policy. Whether the suppression arise from fraud or accident is immaterial, if the fact be material to the risk.

4. The applicant is required to state his name, residence, place of birth, age, whether married or single, employment, with a description of the diseases with which he has been afflicted. He is also to state how

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insure? Has a creditor an insurable interest in the life of his debtor? For whose benefit may a person insure his own life? What must the insurable interest in the life of another be? Has a person such interest in the life of his wife or child?

2. Free from what does the law of New York allow the wife to insure the life of her husband? If the husband survive the wife? Is a life-policy assignable? What amount may the assignee recover? Is it necessary that the assignee have an insurable interest?

3. Are the applicants for life insurance generally known to the officers of the company? Upon what does the company rely? What is made the basis of the policy? What is requisite? If there is any concealment or suppression of material facts? If the suppression arise from accident?

4. What is the applicant required to state? What is he required to

many of his parents, brothers, and sisters have died, with their ages and cause of their death; whether or not he is moral and temperate in his habits. A medical examination generally follows. The physician first gives a description of the applicant: "This person has blue eyes, brown hair, florid complexion; weighs about one hundred and fifty pounds; is about five feet eleven inches high; general appearance indicates sound health; temperament, sanguine; his general appearance indicates vigor; he is thirty-six inches around the breast; percussion gives a clear sound over the whole surface of the chest; he is not inclined to a cough on taking cold; his pulse is about seventy per minute; the ratio between respiration and pulsation is about one to two; the action of the heart is uniform, free, unobstructed, and healthy." The physician's report is varied, according to circumstances.

5. There are certain conditions annexed to the policy which will render the policy void. If the insured go into certain unhealthy climates, without permission of the company, or enter into the military service, or into the naval service, or commit suicide, or die in a duel, or die by the hand of justice, the policy will become void. If he become insane, and commit suicide, the policy will not be void.

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state in reference to his father, mother, brothers, and sisters? What examination generally follows? What description does the physician give of the applicant? How is the physician's report varied?

5. What is the effect if certain conditions annexed happen? What are these conditions? What is the effect if the insured become insane, and commit suicide?



## CHAPTER LXXXI.

## THE LOGIC OF PLEADING.

1. In every State there is a power to enforce every right, to redress every wrong, and to punish every public offence. This power is reposed in the hands of judges and magistrates, duly authorized to issue process for bringing the parties before them, and to hold courts for the purpose of hearing and determining all matters in controversy between the parties. The forms adopted in the several States for obtaining remedies and punishing crimes are nearly the same, although they differ in some minor points. The practice and pleadings, as they existed in the colonies before the Revolution, are still retained in some of the States. In other States, a new code has been adopted, by which the former practice and pleadings are slightly simplified and abridged.

2. Pleading is the most instructive and important single title in the law. The most simple of judicial remedies cannot be obtained without the aid of pleadings. The science of pleading comprises that series of rules which regulate the formal statement of the matters alleged on the one side and denied on the other, leading to, and constituting, the issue on which the controversy depends. The great object at which this science aims is a clear, logical, and legal disposition of the controverted points, so as to reduce them to simple propositions, capa-

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1. What power exists in every State? In whose hands is this power reposed? What are the judges and magistrates authorized to do? Are the forms for obtaining remedies and punishing crimes the same in all the States? What is still retained in some of the States? In other States, what has been adopted?

2. What is said of the importance of pleading? What cannot be obtained without pleading? What does the science of pleading comprise? What is the object at which the science aims? If one is acquainted

ble of being tested by the proofs of the contending parties. It is impossible to be acquainted with the mode of pleading, and at the same time be ignorant of the law of the case. It is the application of the legal principles to the facts of the case. Pleading, in civil actions, consists of the formal allegations offered on the one side, for the purpose of maintaining the action; and denials offered on the other side, for the purpose of defeating the action. The wisdom of ages agrees in the sentiment, that good pleading is the perfection of human reason.

3. The averment of facts on either side presupposes some principle or rule of law applicable to the facts alleged, and which, taken in connection with the facts, constitute the plaintiff's claim or defendant's defence. Every right of action and every defence results from matters of fact and matters of law combined. In every complaint, some legal proposition is necessarily implied. All that a party submits to the court, by alleging facts, is the legal operation of the facts. For the purpose of deciding the legal operation, a rule of law must always be tacitly supplied or understood. These rules are found to involve a body of principles constituting a complete system of legal logic. All pleading is essentially a logical process. By analyzing any good pleading, we shall find in it the elements of a good syllogism. If an action is brought for trespass, and the complaint be analyzed, and arranged in the form of a syllogism, we have for the

MAJOR PROPOSITION. "Against him who forcibly enters on my land, I have a right, by law, to recover damages."

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with the mode of pleading, of what will he not be ignorant? To what is it the application of legal principles? Of what does pleading, in civil actions, consist? In what sentiment does the wisdom of ages agree?

8. What does the averment of facts on either side presuppose? From what does every right of action and every defence result? What is implied in every complaint? What is all that a party submits to the court by alleging facts? For the purpose of deciding the legal operation, what must be supplied? What are these rules found to involve? What is all pleading essentially? By analyzing any good pleading,

**MINOR PROPOSITION.** "The defendant has forcibly entered on my lands."

**CONCLUSION.** "I have a right to recover damages against the defendant."

The decision of the court is only a reaffirmance of the conclusion.

4. The plaintiff's alleged right to recover may be contested by the defendant, by a denial of either of the propositions, or of the conclusion. The denial of either is a complete denial of the plaintiff's claim, and the defendant is generally allowed to deny only one. If he denies one successfully, he attains the same object which he could attain in denying all. If the defendant deny the major proposition, which consists of matter of law, the denial forms an issue of law, or a demurrer. If the defendant deny the minor proposition, which consists of matter of fact, the denial forms an issue of fact. If the major proposition be correct, and the minor proposition be true in point of fact, the conclusion must inevitably follow; unless the defendant can repel it, by alleging some new matter which avoids it, and which implies a denial of it. There is no form of direct denial, in which the conclusion can be answered.

5. Let us suppose that the plaintiff has released his cause of action to the defendant, and that the release is new matter on which the defendant relies for defeating

what shall we find in it? If an action be brought for trespass, and the complaint be analyzed and arranged in the form of a syllogism, what would be the major proposition? What would be the minor proposition? What would be the conclusion? What is the decision of the court?

4. How may the plaintiff's alleged right to recover be contested by the defendant? Is defendant generally allowed to deny more than one? If he deny one successfully, what is the effect? If the defendant deny the major proposition, what does the denial form? If he deny the minor proposition, what does the denial form? If the major proposition be correct, and the minor proposition be true, what follows? Is there any form of direct denial in which the conclusion can be answered?

5. If we suppose that the plaintiff has released his cause of action, and the answer be reduced to a syllogism, what would be the major proposition? What would be the minor proposition? What would be the



the action. The answer, if reduced to a syllogism, would stand in this form:

**MAJOR PROPOSITION.** "If he on whose lands I have forcibly entered, release to me his cause of action, he has thereafter no right, by law, to recover damages against me."

**MINOR PROPOSITION.** "The plaintiff has released to me his right of action against me, for entering on his lands."

**CONCLUSION.** "The plaintiff has, by law, no right to recover damages against me, for the trespass."

The plaintiff has now a right to reply, by denying either of the propositions, or the conclusion contained in defendant's answer. If he cannot successfully deny one of the three, his action must fail. Let us suppose that the release was obtained by fraud. This is new matter, by which the plaintiff proposes to overthrow the defendant's conclusion. This reply, arranged in the form of a syllogism, would be as follows:

**MAJOR PROPOSITION.** "A release obtained by fraud does not, in law, destroy any pre-existing right to recover damages."

**MINOR PROPOSITION.** "The release pleaded in defendant's answer was extorted from plaintiff by fraud."

**CONCLUSION.** "Therefore, the release does not destroy any right to recover damages against the defendant."

6. Each party has a right to allege new matter in any stage of the pleadings, as long as he has occasion to answer new matter. The right of electing between the three

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conclusion? What has plaintiff now a right to do? If he cannot successfully deny one of the three? What is now supposed? If this new matter be introduced into the reply, and the reply be reduced to a syllogism, what would be the major proposition? What would be the minor proposition? What would be the conclusion?

6. How long has each party a right to allege new matter? How long is the right of electing between the three modes of meeting the adversary's allegations continued to each party? What does an issue pre-

modes of meeting the adversary's allegations is continued to each party, until the pleadings terminate in an issue of law or an issue of fact. An issue precludes the allegation of further new matter on either side, and thus regularly closes the pleadings. The whole controversy is, by the issue, reduced to some one point of law or of fact. The question on which the contest depends is now distinctly presented by the issue. If the issue be taken on a matter of law, it is to be decided, after argument, by the court. If the issue be taken on a matter of fact, it is generally determined by a jury. The issue being decided, judgment must follow in favor of the party entitled to it. All pleading is a logical process. The object of the process is to facilitate the administration of justice, by simplifying the grounds of the controversy, and ultimately to narrow the contest to a single affirmative and negative.

7. Matters of fact must always be expressly alleged. The facts on which the complaint or answer is founded, are supposed to be unknown to the judges. The conclusion must also be expressed by a demand or prayer for judgment. It does not appear from the facts stated what the party proposes to claim from the facts. He can derive no advantage from the facts which he does not claim by his pleadings. The first proposition in the syllogism, which is the rule of law, is not expressed in the pleadings in any form. The judges are presumed to know judicially what the law on any given state of facts is. An issue of law is said to be an admission of the facts, but a denial of the legal effect of the facts claimed. New matter is in the language of the law denominated matter of avoidance,

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clude? To what is the whole controversy by the issue reduced? What is distinctly presented by the issue? If the issue be taken on a matter of law, by whom is it to be decided? If the issue be taken on a matter of fact? The issue being decided, what follows? What process is all pleading? What is the object of the process?

7. What must be expressly alleged? Are the facts supposed to be known by the judges? How is it also necessary to express the conclusion? What does not appear from the facts stated? What are the only advantages to be derived from the facts? Is the first proposition in a syllogism expressed in the pleadings? What are the judges presumed

which avoids the consequences which would otherwise result from the premises. New matter advanced by either party must form a sufficient answer in law to the allegation of the opposite party, and also fortify the party pleading new matter, in what he has before pleaded. The plaintiff must prevail, if at all, on the facts stated in his complaint. Whatever the parties may allege in their subsequent pleadings, must go to fortify the complaint on one side and the answer on the other. If it were otherwise, the foundation of the action and of the defence might be entirely changed in each successive pleading.

8. An important requisite in all pleading is certainty. In declaring on a contract, the plaintiff is not bound to allege that the defendant, at the time of contracting, was competent to contract; nor that the contract was not obtained by fraud; or to introduce any other special matter, which is to be alleged and proved on the other side to defeat the action. If any such matters of fact exist, they are matters of defence to be pleaded and proved by the defendant. It is necessary to allege that the defendant has not paid, or that the agreement has not been performed; for without such allegation, there is no breach of the contract, and no right of action will appear in the complaint. The certainty required in pleading relates—1. To the parties; 2. To the time; 3. To the place; 4. To the subject-matter. The parties should be described by their Christian and surname, for the purpose of identification. If two or more persons be partners, the full name of each

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to know? What is an issue of law said to be? What is new matter in the language of the law denominated? What must the new matter advanced by either party answer, and what must it fortify? On what must the plaintiff prevail, if at all? What must all subsequent allegations in the pleadings go to justify? If it were otherwise, what would be the effect?

8. What is an important requisite in all pleading? In declaring on a contract, what is the plaintiff not bound to allege? If any such matters of fact exist, by whom are they to be pleaded and proved? What is necessary to be alleged? What would not appear in the complaint, without such allegation? To what does the certainty required in pleadings relate? How must the parties be described? If two or more persons

should be stated. They cannot sue and be sued by their firm-name. A corporation may sue and be sued by its corporate name. When the time is immaterial, the party is not confined in his allegations to the true time, nor in his proof to the time alleged. He is not bound, in such case, to show the precise day on which the alleged fact took place. When the day is not material in evidence, it is not material in the pleadings. It is necessary, in point of form, to allege a day for the occurrence of every traversable fact, whether the day is material or immaterial. The cause of action must always appear by the plaintiff's complaint to have occurred before the commencement of the action. The precise day on which a material fact alleged in the pleadings took place, is generally immaterial. In the date of a record, however, or other writing, or date of some other fact, the time of which must be proved by a written document, the time is material. If a tort is stated to have been committed on a particular day, the plaintiff is not confined in his proof to the time alleged. He may support the allegation by proving that the tort was committed on another day; but the day alleged in the complaint, and that proved on the trial, must both be prior to the commencement of the action. If time enters into the terms of the contract, the true time must be stated. In pleading any written instrument, the day on which it is alleged to bear date is material, and must be correctly stated; otherwise there will be a variance between the writing itself, and the description of the writing in the pleadings.

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are partners? Can they sue and be sued in their firm-name? How must a corporation sue? If the time is immaterial? What is he not bound, in such case, to show? If the day is not material in evidence? What is necessary in point of form to allege? When must the cause of action appear in the complaint to have occurred? What is generally immaterial? If the time be the date of a record or other writing, the date of which must be proved? If a tort is stated to have been committed on a particular day? By what proof may he support his allegation? Prior to what must both the time alleged and the time proved be? If the time enters into the terms of the contract? In pleading any written instrument, what is material? How must it be stated? If otherwise, what will be the effect?

9. The place of every traversable fact stated in the pleadings must be distinctly alleged. This is done by designating the town and county in which the fact is alleged to have occurred. Where the place is material, it must be proved as alleged. In local actions, the place is material, and must be stated according to the fact. A local action is one that must be tried in the county in which the cause of action actually arose. All actions in which the thing to be recovered is in its nature local, are local actions. In this class is included all real actions, waste, ejectment, and replevin. If the place be misstated, the plaintiff will be liable to a nonsuit, because the place enters into a description of the action. All criminal proceedings are local. All offences are considered as public wrongs. A public offence must be alleged to have been committed in the county where such offence was actually committed, and in no other. If the proof does not show that the offence was committed as alleged, the verdict must be, *not guilty*. All facts essential to the right of action or defence must be expressly and substantially alleged. Each party tacitly admits the allegations of the opposite party, which he does not deny in some form. The omission to deny, is justly considered as an admission of the fact. What has been admitted by both parties, cannot be denied. Neither party can retract what he has conceded in his pleadings; and the jury have no authority to find any facts, except those at issue. It is incumbent on each party, in stating the grounds of his action or defence, to state them fully and

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9. When must the place be distinctly alleged? How is this done? If the place is material? In what actions is the place material? What is a local action? What may be included in this class? If the place be misstated? Are criminal actions local? How are offences considered? Where must a public offence be alleged to have been committed? If the proof does not show that the offence was committed as alleged? What facts must be expressly and substantially stated? What does each party tacitly admit? How is the omission to deny justly considered? If admissions have been made by both parties? What can either party retract? What have the jury no authority to do? What is incumbent on each party, in stating the grounds of his action or defence?



clearly. A pleading should be according to its legal effect. When a bill of exchange is payable, in its terms, to the order of a fictitious payee, the holder, in an action upon it, must describe it as payable to bearer. When the form and legal effect differ, the party may, at his option, instead of stating the legal effect, recite the instrument in his pleadings, word for word, and refer its legal operation to the court.

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## CHAPTER LXXXII.

### ACTIONS.

1. An *action* is a judicial proceeding which, if conducted to its final determination, will result in a judgment. A *judgment* is the final determination of the rights of the parties in the action. A *special proceeding* is one which does not terminate in a judgment. Actions are civil or criminal. A *criminal action* is prosecuted by the people of the State or nation, as a party, against a person charged with an offence against the State or nation. Every other is a civil action. When the same wrong act exposes a person to a civil action and to a criminal action, the prosecution of one action does not release him from liability on the other. If one person assaults and beats another, the State may maintain a criminal action against such person for the public offence; and the person injured may maintain an action for personal injury. The prosecution of one action does not affect the right to prosecute the other.

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fence? How should a pleading be made? If a bill of exchange is payable, in its terms, to the order of a fictitious person? When the form and legal effect differ, what may the party do?

1. What is an action? What is a judgment? What is a special proceeding? Into what two classes are actions divided? What is a criminal action? What is every other action? If the same act exposes a person to a civil and a criminal action, does the prosecution of one affect the

2. The following are the courts established in the State of New York: 1. Court for the trial of impeachments; 2. Court of Appeals; 3. The Supreme Court; 4. County courts; 5. Surrogate's courts; 6. Justices' courts. In the city of New York, the duties of justices are performed by two classes of justices. One class attends to the criminal duties, and are called police justices. The other class attend to the civil duties, and are called district justices. The Marine Court in the city of New York performs the duties of justices' courts in civil actions, with a more extended jurisdiction. The court which occupies the place of the County Court, in the city of New York, is known as the Court of Common Pleas. There is a court in the city of New York, and another in the city of Buffalo, known as the Superior Court, which have nearly the same jurisdiction as the Supreme Court in those counties.

3. The court for the trial of impeachments is composed of the Senate and Court of Appeals, sitting together. They take an oath to try the impeachment according to evidence. Two-thirds of the members of the court are necessary to a conviction. A majority of the Senate and a majority of the Court of Appeals compose the court. The president of the Senate presides; in his absence, the chief-justice of the Court of Appeals presides. None but public officers are tried in this court. The Assembly first impeaches such officer, and the impeachment is then tried by this court. If found guilty, the penalty is the

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other? If one person assaults and beats another, what two actions may be sustained against him?

2. What are the courts in the State of New York? By whom are the duties of justices performed in the city of New York? To what does the first class attend? What are they called? To what does the second class attend? What are they called? What duties are performed by the Marine Court in the city of New York? What court occupies the place of the county courts in the city of New York? Where are Superior Courts established? What is their jurisdiction?

3. Of what is the court for the trial of impeachments composed? What oath do they take? What number of the court is necessary to convict? What number of each body is necessary to form a quorum? Who presides in the court? In his absence, who presides? Who only are tried in this court? Who impeach such officers? If found guilty

removal from office or disqualification to hold office, or both. The Court of Appeals is composed of eight judges, four of whom are elected by the electors of the whole State, and four are selected from the class of justices of the Supreme Court having the shortest time to serve. The judges of the Court of Appeals hold their office for eight years. One of the four is elected every two years. The four judges of the Supreme Court sit in the Court of Appeals but one year. Four others then take their places. Six judges are necessary to form a quorum. Only questions of law are argued before this court. The court has the power to *affirm*, *reverse*, or *modify* the decision of the general term of the Supreme Court, Superior Court, and Court of Common Pleas, on questions of law. It holds four sessions annually at the capital of the State. Five judges are necessary to pronounce a judgment. If five do not concur, the case must be reheard. If, after two rehearings, five judges do not concur, the judgment of the court below is affirmed. Where five judges agree, the decision is binding on all the courts of the State. If five do not agree, the question involved is still open for consideration in any future case.

4. For the purpose of electing judges of the Supreme Court, the State is divided into eight judicial districts. Four judges of the Supreme Court are elected in each district. They hold their office for eight years. One is elected in each district every two years. Certain duties

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of the charge by this court, what is the sentence? Of what is the Court of Appeals composed? How many are elected by a general vote? From what court are the other four selected? For what time do the judges elected at large hold office? How often is one elected? How long do the four judges of the Supreme Court sit in the Court of Appeals? Who then take their places? How many judges are necessary to form a quorum in this court? What questions are argued and decided in this court? What power has this court? How many sessions does it hold annually? Where? How many judges are necessary to pronounce a judgment? If five do not concur? If, after two rehearings, five judges do not concur? When is the decisions of this court binding on the other courts? If five do not agree?

4. Into how many judicial districts is the State divided, for the purpose of electing judges of the Supreme Court? How many judges are

are performed by each of these judges at chambers—such as granting orders. Other duties are performed in a special term of the court—such as hearing the argument of motions. The trial of actions is heard in the Supreme Court at a circuit. When the Supreme Court try criminal actions, it is known as the Court of Oyer and Terminer. In exercising the powers already mentioned, the court is held by a single judge. There are at least four general terms of this court, held by three judges in each judicial district. Appeals may be taken to the general term, from the trial, by a single judge. The general term may affirm, reverse, or modify the decision of the court below. The concurrence of a majority of the judges holding the general term is necessary to pronounce a judgment. There is a county judge, elected in each county, who holds his office for four years. There are three judges of the Court of Common Pleas in New York City. There are also six judges of the Superior Court of the city of New York. There are four justices of the peace in each town. They hold their office for four years. One is elected annually. There are six police justices, and eight district justices in the city of New York.

5. The people of the State may commence an action for the recovery of any lands belonging to them, held and claimed by any person, within *forty years*. Any person claiming such land under a grant from the State,

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elected in each district? For what time do they hold their office? How often is one judge elected in each district? Where may each judge grant orders? Where does he hear arguments of motions? When does he try actions? When the Supreme Court try criminal actions, what is it called? By how many judges is the court held in exercising these powers? How many general terms of this court are held annually in each judicial district? By how many judges? From what are appeals taken to the general term? What power has the general term in cases brought before it on appeal? What number of judges must concur in the judgment? What judges elected in each county? For what time elected? How many judges of the Court of Common Pleas in New York City? Of the Superior Court? How many justices of the peace in each town? How long do they hold office? How many are annually elected? How many police justices in the city of New York? How many district justices?

5. What actions may commence within forty years from the time the

may commence an action to recover them within the same time. If an owner of real estate lease the same to another, he or his heirs may commence an action to recover the same at any time within forty years from the last payment of rent. The claim to lands by adverse possession must have existed for forty years, to perfect the title of the claimant in either of the above cases. If the action is brought by one citizen against another for the recovery of real property, or on a sealed instrument, it must be commenced within *twenty years*. If the action be for a money demand on contract, it must be commenced within *six years* from the time the cause of action accrued. If against the sheriff, for malfeasance or misfeasance, within *three years*. If for libel, slander, assault and battery, or false imprisonment, within *two years*. If against the sheriff for the escape of a prisoner, within *one year*. The time in which an action must be brought is somewhat different in the different States. A majority of the States, however, concur in the limitation above stated.

6. All persons who have an interest in the success of the action may be joined as plaintiffs; and all persons who have an interest adverse to the plaintiffs may be made defendants. An action is brought by and defended by an infant, in the name of the infant, by *guardian ad litem*. The court has power, in an action before it, to determine the rights of all the parties to the action. Actions are local, which must be brought in the county where the property lies, or in which the cause of action arose. All other actions are transitory. The proper county for the trial of a transitory action is the county in which one of

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cause of action arose? What actions may be commenced within twenty years? What actions may be commenced within six years? What actions within three years? What actions within two years? What actions within one year? Is the time in which an action must be brought the same in all the States?

6. Who may be joined as plaintiffs in an action? Who are made defendants? How is an action brought by and defended by an infant? What power has the court in an action before it? What actions are local? What transitory? What is the proper county for the trial of a transitory action? On what grounds may the place of trial be changed?

the plaintiffs or one of the defendants resides. The place of trial may be changed, on the ground that a fair trial cannot be had in the county where the action is brought, and on the ground that a greater number of witnesses reside in some other county. Actions under the Code are generally commenced by summons, but they may be commenced in the inferior courts by warrant or attachment. There are two forms of summons under the Code—one for a *money demand on contract*, and one for *relief*. When, from the nature of the contract, the plaintiff knows and can specify the *exact sum* which he is entitled to recover, the summons for a money demand on contract is used. In this case, the plaintiff is not required to call upon the court to ascertain or decide any thing but the existence and the terms of the contract, by which the amount claimed is due. When the *amount is unliquidated*, in its nature requiring other proof, and depending on other considerations than those which appear in the contract itself, such action is an action to ascertain the plaintiff's right to damages, which are to be paid and satisfied in money, and the summons for relief must be used.

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## CHAPTER LXXXIII.

### COMMENCEMENT OF CIVIL ACTIONS.

1. A SUMMONS may be served by any person who has arrived at the years of discretion, except the plaintiff. It must be served by delivering to, and leaving with, the

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How are actions under the Code generally commenced? How many forms of summons under the Code? When must the form for a money demand on contract be used? In this case, what does the plaintiff call upon the court to ascertain or decide? When is the second form to be used?

1. By whom may a summons be served? In what manner must it be

defendant a copy thereof. If the defendant be out of the State, or concealed, it may be served by advertising. If the service of the summons be made by the sheriff, the certificate of the sheriff is sufficient proof of the service, as the sheriff acts under his official oath. If served by any other person, the service is proved by the affidavit of the person serving the same. If served by publication, the service is proved by the affidavit of the printer or publisher. Civil actions are commenced by service of summons. The complaint is usually served with the summons; but the summons may be served without the complaint. The form of the summons for a money demand on contract, when the complaint is served, is as follows:

SUPREME COURT,  
City and County of New York.

JOHN B. ASTOR }  
                  against  
JOHN FOSTER. }

*To the above defendant :*

You are hereby summoned to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer upon me, at my office, No. 227 Broadway, in the city of New York, within twenty days after service hereof, exclusive of the day of such service. And if you fail to do so, the plaintiff will take judgment against you for five hundred dollars, with interest from the 11th day of July, 1863.

W. B. WEDGWOOD, Plaintiff's Attorney.

NEW YORK, July 12, 1863.

The title of the action embraces the name of the court in which you bring the action, the county in which it is to be tried, the name of the plaintiff, and the name of the defendant. The title is usually prefixed to the summons and every other paper served in the action. The summons, and pleadings, and other papers in the action are

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served? If the defendant be out of the State or concealed? If the service be made by the sheriff, how is it proved? If served by any other person, how is the service proved? If served by publication? How are civil actions commenced? What is usually served with the summons? What is the form of a summons for a money demand on contract? What does the title to an action embrace? To what is the title

signed by the attorneys for the parties. In the second form of summons, "the plaintiff will apply to the court for the relief demanded in the complaint," is substituted for "the plaintiff will take judgment against you for," etc., in the first form.

2. The complaint must contain a plain and concise statement of all the facts necessary to be proved on the trial, in order to sustain the action. In an action for slander, the plaintiff must allege that the slanderous words were spoken in the presence of some person. In an action for a claim for the payment of the debt of another, the plaintiff must allege that he paid such debt at the request of the defendant. In an action for services, the plaintiff must allege that he performed the services at the request of the defendant. In an action against a master by a servant, for damages on account of an accident happening to the servant, the plaintiff must allege that he had no notice of the defect which occasioned the accident, and that defendant knew of such defect. A demurrer is a question of law raised by one of the parties against the pleading of the opposite party. The defendant may demur to the complaint of the plaintiff on the ground that it appears upon the face of the complaint—1. That the court has no jurisdiction in the case; 2. That the plaintiff has no legal capacity to sue; 3. That there is another action pending between the same parties, for the same cause, in another court of the State; 4. That there is a defect of parties; 5. That several causes of action are improperly joined; 6. That the complaint does not state facts sufficient to constitute a cause of action.

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prefixed? By whom is the summons and other pleadings and papers signed? What change is made in the second form of summons?

2. What must the complaint contain? In an action for slander, what must the plaintiff allege? In an action for a claim for the payment of the debt of another, what must the plaintiff allege? In an action for services, what must the plaintiff allege? In an action for damages against a master by a servant, on account of an accident happening to the servant, what must the plaintiff allege? What is a demurrer? Upon what grounds may the defendant demur?



3. An answer is a pleading framed to meet the complaint. The answer must contain a general or special denial of each material allegation which is to be controverted in the complaint. A general or direct denial permits the defendant to introduce any evidence to controvert any allegation which the plaintiff is required to establish, in order to sustain his action. When malice is necessarily alleged in a complaint, the defendant cannot deny that the act was done with malice; but he must set forth in his answer the facts which show that the act was done without malice. A demurrer is a denial of the law tacitly claimed to govern the case. A general denial is a direct denial of the facts. A special denial is a denial of the conclusion drawn from the facts, by setting up new matter, which avoids the conclusion. The defendant may deny that he has any knowledge or information sufficient to form a belief as to the matters set forth in the complaint, in all cases where he is without such knowledge and information, and where it could not be acquired by due diligence. New matter in an answer is that which admits the cause of action set up, and avoids it.

4. A counter-claim is a cause of action in favor of defendant against plaintiff. A reply to new matter set up in the answer is equivalent to the answer to a complaint, and is governed by the same rules. A sham answer is good upon its face, but false in fact. A frivolous answer denies no material allegation of the complaint, and sets up no defence. In such case, a motion is made to strike out the answer. A reply is necessary when the answer

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3. What is an answer? What must the answer contain? What evidence does the general denial permit the defendant to introduce? When malice is necessarily alleged in the complaint, how can the defendant deny the malice? What is the demurrer a denial of? What is a general denial? What is a special denial? When may the defendant deny that he has any knowledge or information sufficient to form a belief, as to the matters set forth in the complaint? What is new matter in an answer?

4. What is a counter-claim? To what is a reply to new matter set up in the answer equivalent? What is a sham answer? What is a frivolous answer? What is the remedy in such cases? When is a reply

contains new matter constituting a counter-claim. The pleadings in an action are the complaint, answer, and reply. If one pleading be verified, all subsequent pleadings must be verified. The verification is made by a party to the action, or by his attorney or agent to whom the facts are known. If a corporation be a party, the verification is made by any officer of the corporation, or by their agent acquainted with the facts. In a joint answer by maker and indorser of a promissory note, the verification is made by both. Redundant matter in pleadings is the needless repetition of a material allegation. Irrelevant matter has no bearing on the subject of the controversy. Causes of action are divided into several classes, and any two or more causes of action in the same class may be united in the same action. Those allegations which the parties must prove in order to sustain their action or defence, are material allegations. If a material allegation remain unanswered, it is taken as true. A variance between the allegation and the proof is a partial proof. If the case is entirely unproved, it is not a variance but a failure of proof. If partially proved, it may be amended. If entirely unproved, it cannot be amended. If a variance mislead the opposite party, the court will allow an amendment, on payment of costs. The fact that the party has been misled, must be proved. Pleadings are to be served within twenty days of each other. Either party may amend his pleading once of course, within twenty days after he has served it, or

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necessary? What are the pleadings in an action? If one pleading is verified? By whom is the verification made? If a corporation be a party? In a joint answer by maker and indorser of a promissory note, by whom is the verification made? What is redundant matter in a pleading? What is irrelevant matter? How are causes of action divided? What causes may be united in the same action? What are material allegations? If a material allegation remain unanswered? What is a variation between the allegation and the proof? If the cause is entirely unproved? If partially proved? If a variance mislead the opposite party, what will the court do? How is the fact proved? How soon after service of the summons must the answer be served? How soon after the service of the answer must the reply be served? How many times may either party amend his pleadings of course? Within

within twenty days after the other party has served his next pleading. All other amendments must be made by the permission of the court, on motion, and notice to the other party. A summons can only be amended by leave of the court, on motion. The court may allow amendments at any time before judgment. Where the plaintiff is ignorant of the name of a defendant, he may insert a fictitious name in the title, and set forth the reason in the body of the complaint.

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## CHAPTER LXXXIV.

### ORDER OF ARREST.

1. ARREST and imprisonment for debt is abolished in most of the States, where the debt arose on contract not tainted with fraud. An order of arrest in New York may be granted in either of the following cases :

(1.) Where the action is for damages not arising on contract.

(2.) Where defendant is a non-resident, or is about to remove from the State, or where the action is for injury to person or property.

(3.) Where the action is for a breach of promise, or for money received in a fiduciary capacity, or for misconduct or neglect in a professional employment.

(4.) Where the action is for the recovery of personal property, and it has been concealed.

(5.) Where the action is against a defendant guilty of fraud in contracting the debt.

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what time? How must all other amendments be made? How only can a summons be amended? When may the court allow amendments? When plaintiff is ignorant of the name of a defendant, what may he do?

1. What is abolished in most of the States? What are the cases in which an order of arrest may be granted under the Code? By whom is

(6.) Where the defendant has removed or concealed his property, for the purpose of defrauding his creditors.

The order of arrest is granted by a judge of the court in which the action is brought. The affidavit of the plaintiff, or of some other person, showing that a cause of action exists, and that it is one of those for which the order may be granted, is presented to the judge. The complaint may be presented with the affidavit. An undertaking, to the effect that if the defendant recover judgment the plaintiff will pay all costs and damages not exceeding a sum therein specified, must be presented to the judge, and filed with the clerk of the court. The judge will then grant the order of arrest. The affidavit and order of arrest are put into the hands of the sheriff. The sheriff arrests the defendant, and delivers to him a copy of the affidavit and order of arrest. He retains the prisoner in custody, unless he gives bail, or is otherwise discharged by law. In default of bail, the sheriff may commit him to the county jail.

2. The defendant may be discharged from arrest upon giving bail, or depositing the amount mentioned in the order. Attorneys, and other officers of the court, are incompetent to become bail. If the prisoner gives bail, his sureties have nearly the same power over him as the sheriff had. They may at any time arrest the defendant, or authorize another person to arrest him, and surrender him to the sheriff. The surety procures from the county clerk a certified copy of the undertaking. On delivering the defendant to the sheriff, he presents the certified copy

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the order of arrest granted? What affidavit is presented to the judge? What may be presented with the affidavit? What undertaking must be presented to the judge? Where filed? When the judge has granted the order of arrest, what papers must be put into the hands of the sheriff? When the sheriff arrests the defendant, what papers does he serve upon the defendant? What does the sheriff do with the prisoner? In default of bail, what action does the sheriff take?

3. How may the defendant be discharged from arrest? Who are prohibited from becoming bail? If the prisoner give bail, what power have his sureties over him? What action may they take at any time? What does the surety procure from the county clerk? Upon delivering

of the undertaking, and receives thereon the sheriff's acknowledgment of the surrender. He then presents this copy of the undertaking to the judge, on notice to the other party, and the judge may order that the sureties be exonerated on filing the papers used in the motion.

3. The surety taken by the sheriff must be a householder or freeholder, within the State. Each surety must be worth the amount specified in the order of arrest, exclusive of property exempt from execution. When defendant has been arrested and committed to prison, he may have an application made to the court to vacate or modify the order of arrest, and to reduce the amount of bail. The application may be made upon the papers served by the sheriff, and these papers may or may not be accompanied by counter-affidavits. If upon presenting the whole case to the court on both sides, the court would not grant an order, if it was then presented for the first time, the court will vacate the order already granted.

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## CHAPTER LXXXV.

### REPLEVIN.

1. WHEN one person has the property of another in his possession, and it came into the possession of the holder lawfully, the owner must demand the delivery of the property to him. If the holder refuse, the owner may

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the prisoner to the sheriff, what does he present to the sheriff? What acknowledgment does the sheriff make thereon? How do the sureties then become exonerated from liability?

3. What must be the qualifications of the sureties? How much must they be worth? When defendant has been arrested and committed to the county jail, what application may be made to the court? Upon what papers may the application be made? When will the court vacate the order of arrest?

1. When one person has come lawfully into possession of personal

commence proceedings to secure his property, and damages for retaining it. If the property came into the hands of the holder wrongfully, the owner may commence an action without making a demand. The plaintiff makes an affidavit setting forth the following facts:

- (1.) That he is the owner of the property, or entitled to the possession.
- (2.) That the property is wrongfully detained from him.
- (3.) The alleged cause of the detention.
- (4.) That it has not been taken for tax, or seized under execution; or if seized under execution, it is exempt.
- (5.) The actual value of the property.

Upon this affidavit the plaintiff's attorney makes an indorsement, requiring the sheriff of the county to take the property from the defendant and deliver it to plaintiff. The affidavit, with the indorsement thereon, is delivered to the sheriff. An undertaking is prepared, approved by and deposited with the sheriff.

2. The sheriff, on receiving such papers, takes possession of the property. The defendant may except to the sufficiency of the sureties, or he may reclaim the property by giving to the sheriff an undertaking executed by two or more sureties, in double the value of the property, to deliver the property to the plaintiff if judgment is recovered against the defendant. If no such bond is given at the expiration of three days, the sheriff delivers the property to the plaintiff. If the property is concealed in a building or inclosure, it is the duty of the sheriff to make

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property of another, what is the duty of the owner? If the holder refuse to deliver the property to the owner on such demand, what may the owner do? If the property came into the hands of the holder wrongfully, is a demand necessary before the commencement of an action? What are the facts which the plaintiff sets forth in his affidavit? What indorsement does the plaintiff's attorney make upon this affidavit? What is delivered to the sheriff? By whom is the undertaking approved?

2. What action does the sheriff take on receiving these papers? To what may the defendant except? How may he reclaim the property? By how many sureties executed? In what amount? What is the condition of the undertaking? If no such bond be given, what action does the sheriff take? How soon? If the property be concealed in a build-

a public demand; and if the property is not delivered, to break open the building or inclosure, and take possession of the property.

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## CHAPTER LXXXVI.

### INJUNCTIONS.

An order of injunction is an order restraining the defendant from performing a specific act. The order may be granted—

(1.) When the relief demanded in the complaint consists in restraining the performance of some act which would be injurious to the plaintiff.

(2.) When the defendant is doing, or threatening to do, some act in violation of plaintiff's rights.

(3.) Where defendant is about to remove or dispose of his property, with intent to defraud his creditors.

The order of injunction is granted by a judge of the court. The order is granted upon the complaint and affidavits. The order is served personally, by showing to the defendant the original, and delivering to, and leaving with him a copy. A copy of the affidavit must also be served with the injunction. An undertaking is also necessary. If the court deem it proper that defendant should be heard, the court will grant a temporary injunction, with an order to defendant to show cause, on a day specified therein, why the injunction should not be made perpetual.

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ing or inclosure, what is the duty of the sheriff? If the property is not delivered, what action may he take?

CH. 86. What is an order of injunction? In what cases may it be granted? By whom is the order granted? Upon what papers is the order granted? How is the order served? What must be served with the order? Is an undertaking necessary? If the court deem it proper that defendant be heard, what will the court grant? With what order?

## CHAPTER LXXXVII.

## ATTACHMENT.

1. In some of the States, an attachment may be issued at the commencement of the actions generally, and the property of the defendant attached and held for the payment of the judgment. In New York, under the Code, an order of attachment may be granted, when it shall appear by affidavit—

- (1.) That defendant is a foreign corporation.
- (2.) That defendant is a non-resident.
- (3.) That he has departed from the State, with intent to defraud.
- (4.) That he conceals himself within the State.
- (5.) That he has assigned, disposed of, or secreted his property, with intent to defraud.

The order is granted by a judge of the court in which the action is brought. It is granted upon an affidavit showing that there is sufficient cause. An undertaking is necessary, in case of attachment.

2. The order of attachment is directed to the sheriff, requiring him to attach the property of the defendant in his county. The signature of the judge to the attachment is sufficient, without the signature of the clerk of the court, or the seal of the court. It is the duty of the sheriff, on receiving the order of attachment, to attach all the property of the defendant within his county, or so

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1. What is the practice in some of the States, as to issuing attachments? For what causes may an order of attachment be granted in the State of New York? How must these facts appear? By whom is the attachment granted? Upon what? Is an undertaking necessary?

2. To whom is the order of attachment directed? What does it require the sheriff to do? What signature to the order is sufficient? What is the duty of the sheriff on receiving the order of attachment?



much as shall be necessary to satisfy the plaintiff's demand, with costs and expenses. He must make an inventory of all the property seized by him, or of so much as shall be necessary to satisfy the plaintiff's demand, with costs and expenses. Under the direction of the court, he must collect and receive all debts due to the defendant. When any of the property is perishable, it is his duty to convert such property into money, and retain the money until the termination of the suit. It is not necessary for the sheriff to enter upon the real property. It is only necessary to include the same in his return. When a judgment is obtained, and an execution issued, it is the duty of the sheriff to satisfy the execution out of the property attached by him. He first applies the money in his hands, obtained from the sale of perishable property and the collection of debts. If a balance remains due, he proceeds to sell the other property, and satisfy the execution. He then delivers the balance to the defendant.

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## CHAPTER LXXXVIII.

### TRIAL OF ACTIONS.

1. If the defendant does not serve an answer or demurrer to the complaint, a judgment is taken against him without a trial. A trial is only necessary where there is an

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Of what must he make an inventory? What collections may he make, under the direction of the court? If any of the property is perishable, what is his duty? Is it necessary for the sheriff to enter upon the real property? What only is necessary? When a judgment is obtained, and an execution issued, what is the duty of the sheriff? What does he first apply to the payment of the execution? If a balance remains due, what action does he take? What does he do with the balance?

1. If the defendant does not serve an answer or demurrer to the complaint, how is judgment taken? When only is a trial necessary? In a money demand on contract, where the judgment is entered on failure

issue of law, or an issue of fact formed by the pleadings. In a money demand on contract, where the judgment is entered on failure of answer, the judgment-roll consists of the summons, the affidavit of service, the affidavit of no answer or demurrer, the affidavit of disbursements, and the statement for judgment. If the complaint is sworn to, the judgment roll may be entered without further proof. If it is not sworn to, the claim must be proved before the clerk of the court, when the judgment-roll is entered. When the summons is for relief, and there is no answer or demurrer, the plaintiff must generally apply to the court to assess the amount due him. If the action be to recover personal property with damages, or to recover damages for assault and battery, and defendant fail to answer or demur, the court, on application of the plaintiff, will refer the case to a sheriff's jury to assess the damages.

2. When an answer or demurrer has been served, and an issue of law or an issue of fact has been formed, there must be a trial. A trial is a judicial investigation of the issues contained in the action. Issues of law are generally tried by the court; and issues of fact are submitted to a jury. A note of issue is filed with the clerk of the court, and he places the cause on the calendar in the order of the date of the issue. The date of the issue is the date of the service of the last pleading. The note of issue contains the title of the cause, the names of the attorneys, the date issue was joined, and a statement of the issue, whether of law or of fact. When the cause is placed on the calendar, either party may notice it for trial. Both parties generally give notice, each to the other. The plaintiff

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to answer, of what does the judgment-roll consist? If the complaint is sworn to, is further proof necessary? If it is not sworn to, before whom must it be proved? When the summons is for relief, and there is no answer or demurrer, to whom must the plaintiff apply to assess the amount due? If the action be for the recovery of personal property with damages, or for assault and battery?

2. When an answer or demurrer has been served, and there is an issue, what must follow? What is a trial? By whom are the issues of law tried? By whom the issues of fact? What is filed with the clerk of the court? In what order does the clerk put the cause on the calen-

gives notice that if the defendant fail to appear on the day of trial, he will take an inquest in the action. Defendant gives notice that if the plaintiff fail to appear, defendant will move to dismiss the complaint. No motion for an inquest, or for the dismissal of the complaint, will be entertained by the court, unless previous notice has been given.

3. An inquest is an inquiry before the court into the facts of the case, and rendering judgment thereon, in absence of defendant. In order to prevent an inquest from being taken before the cause is called in its order on the calendar, an affidavit of merits must be filed with the clerk, and a copy served on plaintiff's attorney. The defendant must state in his affidavit of merits, "that he has fully and fairly stated the case to his counsel (giving his residence), and that he is advised, after such statement by his counsel, that he has a good defence upon the merits." When the case is brought on for trial, either party may furnish the court with a copy of the pleadings. It is the duty of the clerk to enter the judgment in his minutes, specifying the time and place of trial, the names of the jurors and witnesses, the verdict, and the judgment in accordance with the verdict.

4. If a question of law arises on the trial, either party may take an exception to the ruling of the court thereon, and may have the question reheard on appeal. Questions of law are raised by demurrer, and by a bill of exceptions. A motion may be made for a new trial on the minutes of the court, containing exceptions, or to set aside a

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dar? What is the date of the issue? What does the note of issue contain? Who may give notice of trial? What notice does the plaintiff give? What notice does the defendant give? Will the court entertain such motion without notice?

3. What is an inquest? What must be done to prevent an inquest before the cause is called in its order on the calendar? What must defendant state in his affidavit of merits? When the action is brought to trial, which party furnishes the court with a copy of the pleadings? What entry does the clerk make in his minutes of the trial?

4. If a question of law is decided during the trial, what may either party do? How are questions of law raised? For what may a motion for a new trial, on the minutes of the court, be made? In what way

dict for insufficient evidence, or for excessive damages. Trial by jury may be waived—1. By failing to appear; 2. By written consent filed with the clerk; 3. Oral consent in open court.

If the action is tried by the court without a jury, the judge must state in his decision the facts found by him, and the conclusions of law. Either party may except to such conclusions of law within ten days after notice of the decision.

The party appealing makes out a case, which must contain a complete history of the trial, embracing the evidence given by the witnesses, and exceptions taken to conclusions of law, which arose on the trial, and exceptions to the conclusions of law found by the judge, if tried by the court without a jury. When the case is printed, the findings are also inserted, which makes a complete history of the case. The same issues which may be tried by the court, may be tried by a referee. The referee must be appointed by the court, either with or without the consent of the parties. The decision of the referee is conclusive in questions of fact, unless it is *clearly* against evidence, or without any evidence to support it. The referee states in his report the facts found, and conclusions of law.

A motion may be made to set aside the report of the referee, and for a new trial, on the following grounds: 1. That the referee has not passed upon all the issues raised by the pleadings; 2. That the facts found are not supported by the evidence; 3. That the conclusions of law are erroneous.

If the report of the referee is set aside, the case goes

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trial by jury be waived? If the action be tried by the court without a jury, what must the judge state in his decision? Within what time may either party except to such conclusions of law?

Which party makes up the case on appeal? What must the case contain? When the case is printed, what is inserted? What issues are tried by a referee? How is the referee appointed? When are the decisions of the referee conclusive in matters of fact? What does the referee state in his report? For what reasons may a motion be made before the court to set aside the report of the referee, and for a new trial? If the report of the referee is set aside, what is the effect?

back to the same referee, to be again tried by him. Judgment is entered on the report of a referee, in the same manner as if the trial were by the court. An appeal can be taken directly to the general term, from a judgment entered on the report of a referee. The case is settled before the referee. A judgment becomes a lien on real property, by being docketed in the Supreme Court, or by filing a transcript of the judgment in the county where the real property is situated. The judgment continues to be a lien upon such real property for a period of ten years from the docketing of the judgment.

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## CHAPTER LXXXIX.

### EXECUTION.

1. An execution may be issued immediately after docketing the judgment. There are three kinds of execution: 1. One against the property of defendant; 2. One against the person of defendant; 3. One to carry the judgment into effect—as, to take the possession of real or personal property from defendant, and deliver it to plaintiff. Under the Code, the execution is issued by the attorney of the plaintiff. It is issued in the name of the people of the State. It is directed to the sheriff of the county in which the property or person is situated. The execution states the county in which the judgment-roll is filed, and that the same is docketed in the county in which

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How is judgment entered on the report of the referee? Can an appeal be taken from such judgment direct to the general term? Before whom is the case settled? When does a judgment become a lien upon defendant's real property? How long does it continue to be a lien on such real property?

1. When may an execution be issued? How many kinds of executions are there? By whom is the execution issued? In whose name? To whom is it directed? What is stated in the execution? What does it command the sheriff to do? If there is not sufficient personal prop-

the sheriff resides. It states the amount of the judgment, and the time when it was entered. It commands the sheriff to satisfy the judgment out of the personal property of the defendant, if sufficient can be found in his county; and if not, it commands him to satisfy the execution out of the real property of defendant, belonging to him on the day when the transcript was docketed in his county, in whose hands soever the same may be. It requires the sheriff to return the execution, within sixty days, to the office of the clerk of the county from which the execution was issued. When a judgment has been obtained in one county, a transcript of that judgment may be sent to any or all the other counties in the State, and filed with the clerk of the county. This judgment becomes a lien on all the real property that the defendant owned on that day, or acquired thereafter in that county, for ten years.

2. The form of the execution against the person is nearly the same as that against the property, except that it is stated therein that an execution against the property of defendant had been issued and returned unsatisfied. It differs also in the command. In the execution against the person, the people command the sheriff to arrest the defendant, and commit him to the jail of the county until he pays the judgment, or is discharged according to law. The execution is always signed by the attorney of the plaintiff. In an execution for carrying the judgment of the court into effect, the people command the sheriff to take the property from the defendant and deliver it to the plaintiff; and in case a delivery of the property cannot be

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erty to satisfy the judgment? Belonging to him on what day? When is the sheriff required to return the execution? To whom? When a judgment has been obtained in one county, where may transcripts be filed? Upon what does the judgment then become a lien? For what time?

2. What is the form of the execution against the person? What is stated therein? What is the command in an execution against the person? By whom is the execution signed? In an execution for carrying the judgment of the court into effect, what is the command?

made, then to levy upon, and sell so much of the personal property as shall satisfy the judgment for an amount specified therein.

3. The sheriff makes a levy on personal property by seizing and taking the same into his possession. He may levy upon all personal property not exempt from execution by statute, and except choses in action. If the defendant is a partner, the sheriff may levy on his interest in the property in the firm. The sheriff converts the goods and chattels into money by sale at public auction. All persons may purchase, except the sheriff and his deputies. The sheriff's fees, or his poundage, is two and one-half per cent. on the first two hundred and fifty dollars, and one and one-fourth per cent. on the amount exceeding two hundred and fifty dollars. For advertising he is allowed two dollars, and three cents per mile for travelling-fees each way, to be counted from the courthouse of the county.

4. If the sale of the personal property does not satisfy the judgment, the sheriff may sell any of the real property owned by the defendant at the time of docketing the judgment, or at any time after, in whose hands soever the same may be. The sheriff converts the real property into money by sale at public auction, after having advertised the same for six successive weeks previous to the sale. The sheriff delivers to the purchaser a certificate of the sale, subscribed by him; containing a description of the property, the price of each distinct lot, the whole amount of money paid, and the time when the purchaser will be entitled to a conveyance. A duplicate of this certificate

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3. How does the sheriff make a levy upon personal property? Upon what personal property may he levy? If the defendant is a partner, upon what may the sheriff levy? How does the sheriff convert the goods and chattels into money? Who may purchase? What is the sheriff's poundage? What is he allowed for advertising? For travelling-fees?

4. If the sale of the personal property does not satisfy the judgment? How does he convert the real property into money? How long must he advertise the same? What does the sheriff deliver to the purchaser? Where does he file a duplicate? What must be stated in the certificate?

must be filed in the county clerk's office. The judgment debtor's right to redeem ceases at the expiration of one year. Other judgment creditors within three months have a right in the order of their judgments to redeem the property from the purchaser, by paying to him the amount of the purchase, with seven per cent. interest. Each judgment creditor, in his order, must pay all the previous judgments which have become liens on the property.

5. The following property is exempt from execution, except an execution for the purchase-money: 1. Spinning-wheels and stoves for family use; 2. The Bible, family pictures, and school-books; family library, not exceeding fifty dollars in value; 3. Pew in church, one-fourth of an acre of ground, set apart for a burying-ground; 4. Ten sheep, one cow, two swine, with food for the same and for the family for sixty days; 5. Wearing apparel; cooking utensils; 6. Necessary tools of a mechanic, not exceeding twenty-five dollars in value; 7. Other household furniture, tools, or team, not exceeding one hundred and fifty dollars; 8. Professional books and surgical instruments; 9. Shares in a building society, to the value of six hundred dollars; 10. The homestead, to the value of one thousand dollars. This property, in the State of New York, is exempt from execution, and in some other States. This exemption is governed by statutes in each State.

6. If a judgment has been entered in one county, and transcripts have been filed in other counties, and the judgment is paid, it may be satisfied of record in all

What time does the judgment debtor have to redeem the property? What right do other judgment creditors then have? What must each judgment creditor pay?

5. What books are exempt from execution? A burying-ground of what size is exempt? What stock is exempt? What apparel? What tools? What additional household furniture? What books and instruments? What shares in a building society? The homestead of what value? Where is this property exempt? By what is the exemption from execution governed?

6. If a judgment has been entered in one county, and transcripts have been filed in other counties, and the judgment is satisfied, can it be satis-



these counties, and it then ceases to be a lien on the real property of the defendant. A satisfaction-piece is signed and acknowledged by the judgment creditor, and filed in the office of the county clerk in which the judgment was docketed. The clerk then enters the satisfaction upon the record. This satisfies the judgment of record in this county. The judgment debtor then procures transcripts of the judgment, showing that it is satisfied, and has them filed in the counties in which transcripts of the judgment were originally filed.

7. If an execution against the property of the defendant is returned unsatisfied, an order may be procured requiring the judgment debtor to appear before one of the judges of the court, and be examined concerning his property. The order is granted on the affidavit of plaintiff, or his attorney. The affidavit must show that a judgment has been obtained, an execution issued, and that the execution has been returned unsatisfied. The order is served by showing the original to the defendant, and delivering to and leaving with him a copy. A copy of the affidavit is also served. On the day, and at the hour named in the order, the defendant is called by the crier of the court. If he answer, he is sworn and examined. If he fail to answer, an affidavit of service of the previous order is made, and the court grants a further order, for the judgment debtor to show cause why an attachment should not issue against him for the contempt of the order of the court. If he obey the second order, interrogatories may be administered to him, and he may show cause, if he has any, to exonerate himself from the charge of con-

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fied of record in all these counties? What effect does the satisfaction have upon the lien? By whom is the satisfaction-piece signed and acknowledged? Where filed? What action does the clerk then take? How is the judgment satisfied of record in other counties?

7. If an execution is returned unsatisfied, what order may be procured? On what is the order granted? What must the affidavit show? How is the order served? What is served with the order? By whom is the debtor called on the day and hour named in the order? If he answer? If he fail to answer, what is done? What further order is obtained? If he obey the second order, what is administered to him?

tempt. If he does not appear to answer to the second order, the court will grant an attachment, directing the sheriff to arrest the judgment debtor, and produce him in court at a time specified. The leading object of the examination, is to ascertain if the judgment debtor has any property which ought to be applied to the satisfaction of the judgment.

8. When money is discovered, the court will order it to be applied to the payment of the judgment. When other property is discovered, the court will appoint a receiver, to convert the same into money, and to apply the money to the payment of the judgment. A person or corporation holding funds, or being indebted to the judgment debtor, may be examined. If any property, consisting of money or indebtedness, be discovered in the hands of such third party, belonging to the judgment debtor, the court will order it to be applied to the payment of the judgment. If other property is discovered, the court will appoint a receiver to convert the same into money, and apply it to the payment of the judgment.

9. A receiver acts in the capacity of an officer of the court, and is under the direction and control of the court, and responsible to the court only, for the performance of his duties. A receiver may also be appointed by the court, where property which is the subject of the action is in danger of being lost or injured before the termination of the action; or to carry the judgment into effect; or to dispose of property according to the judgment; or where a corporation has become insolvent.

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What may he then do? If he does not appear and answer the second order? What is the leading object of the examination?

8. When money is discovered belonging to the judgment debtor, what will the court order? When other property is discovered, what action will the court take? If a third person, or a corporation, has funds belonging to the judgment debtor? If money is found, or indebtedness discovered, in the hands of the third party, belonging to the judgment debtor, what order will the court make? If other property is discovered?

9. In what capacity does a receiver act? Under whose direction and control is he? To whom is he responsible for his acts? In what other cases may a receiver be appointed?

## CHAPTER XC.

## APPEALS.

1. An appeal to the general term from the decision of a single judge, is taken by the service of a notice on the adverse party, and the clerk with whom the judgment was entered, stating that the party appeals from such judgment. It must be taken within thirty days after the appellant receives notice that the judgment has been entered and perfected. An appeal from the general term is taken to the Court of Appeals in the same manner, and within two years after the decision of the general term.

2. Exceptions to the charge of the judge must be taken to each point separately, and a separate exception taken to the ruling of the judge on each point. If the court is requested to charge the jury that such is the law upon a point involved in the case, and if he refuse so to charge, exception may be taken to his refusal. These exceptions, upon matters of law, may be taken to the general term, and from the general term to the Court of Appeals. The appellant must give security for costs on appeal; and if he wishes to stay execution, he must also give an undertaking that he will pay the judgment, so far as it is confirmed by the appellate court. This undertaking is filed with the clerk of the court, with whom the judgment was filed. An appeal lies from the County Court to the general term of the Supreme Court. An appeal also lies from the Sur-

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1. How is an appeal taken from the decision of a single judge to the general term held by three judges? Within what time must it be taken? How is an appeal taken from the general term to the Court of Appeals? Within what time?

2. How must objections to the charge of the judge be taken? If the court be requested to charge the jury that such is the law upon a point involved in the case, and the judge refuse so to charge? To what court can exceptions to matters of law be taken? What security must the ap-

rogate's Court to the general term of the Supreme Court. The meaning of the term *merits*, as used in the Code, is the strict legal rights of the parties, separate from mere questions of practice, and questions which depend upon the discretion of the court. An appeal is taken in the Marine Court in the same manner as in the Supreme Court. An appeal is taken from the Justice's and District courts by serving a notice of appeal on the adverse party, and on the clerk of the court, stating the grounds of the appeal. The object in stating the grounds of appeal is to inform the justice and the adverse party, so that the justice may make a full return of the evidence upon these points. The justice must make his return within thirty days after service of notice. An appeal is brought to a hearing by placing it on the calendar, and giving notice of argument to the adverse party. All appellate courts have the power to affirm, reverse, or modify the decision of the court below.

3. A commission to examine a witness out of the State is obtained by application to the court. The application is founded upon an affidavit, stating that a case is at issue; the name of the witness; that he is material, as the party is advised by counsel, and verily believes; and that he is out of the State. If a commission be granted, interrogatories are prepared by the applicant, and cross-interrogatories by the adverse party. The interrogatories are settled before the court, and annexed to the commission.

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pellant give? If he wishes to stay execution, what further security must he give? With whom is this undertaking filed? To what court does an appeal lie from the County Courts? From the Surrogate's Court? What is the meaning of the term *merits*, as used in the Code? How is an appeal taken in the Marine Court? How is an appeal taken from Justice's and District courts? What is the object of stating the grounds of appeal? Within what time must the justice make his return? How is an appeal brought to a hearing? What power has the appellate court?

8. How is a commission to examine a witness out of the State obtained? Upon what is the application founded? What must be stated in the affidavit? If a commission be granted, what is prepared by the applicant? What is prepared by the adverse party? Before whom are the interrogatories settled? To what annexed? Under what seal is the

The commission is issued under the seal of the court. When a witness is about to leave the State, without a probability of returning in time to appear personally at the trial, or is so sick or infirm as to be unable to attend, he may be examined conditionally (*de bene esse*). The application for such examination must be founded on affidavit. The application may be opposed on affidavit. If an order of examination is granted, the witness is examined, his examination taken down in writing, carefully read to the witness, signed by him, certified by the judge, and filed with the clerk of the court.

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## CHAPTER XCI.

### COMMERCIAL PAPER.

1. **COMMERCIAL** paper is that which is used as a representative of value, or as a substitute for gold and silver in the transaction of business. The term *commercial paper* is applied to—1. Promissory Notes; 2. Bank-bills; 3. Bills of Exchange; 4. Checks.

The following is the usual form of a Promissory Note:

\$500.

NEW YORK, June 8, 1865.

One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

WILLIAM BLAKE.

The following is the usual form of a bank-bill:

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commission issued? When a witness is about to leave the State, without a probability of returning in time to appear personally at the trial, or is sick or infirm, what may be done? Upon what is the application for such examination founded? How may it be opposed? If an order is granted, what is done? By whom certified? Where filed?

1. What is commercial paper? To what instruments is the term applied? What is the usual form of a promissory note? What is the

STATE OF NEW YORK.

The American Exchange Bank will pay five hundred dollars to the bearer, on demand.

No. 6,739.

NEW YORK, June 8, 1865.

WILLIAM BLAKE, Cash.

JOHN B. ASTOR, Pres.

The following is the usual form of a bill of exchange:

\$500.

NEW YORK, June 8, 1865.

On demand, pay to the order of John Foster five hundred dollars, value received, and charge the same to my account.

To WILLIAM BLAKE,  
Boston, Mass.

JOHN B. ASTOR.

The following is the usual form of a check:

\$500.

NEW YORK, June 8, 1865.

American Exchange Bank pay to John B. Astor, or order, five hundred dollars.

WILLIAM BLAKE.

2. A promissory note is a written agreement made by one party to pay to another party a specified amount, in money or other property, at a given time. Bank-bills are promissory notes issued by incorporated banks. They are made payable to the bearer, on demand, in gold and silver, and treated as money in the ordinary transactions of business. Bank-bills are not strictly a legal tender; but the tender of current bank-bills will be a sufficient tender in payment of a debt, unless the creditor, at the time of such tender, demand payment in gold and silver.

3. Exchange is a negotiation by which one person transfers to another funds which he has in some other place. This transfer is made by means of an instrument which represents such funds, and is known as a bill of exchange. A bill of exchange is a written order, made by

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usual form of a bank-bill? What is the usual form of a bill of exchange? What is the usual form of a check?

2. What is a promissory note? What are bank-bills? How made payable? In what? How treated in the ordinary transaction of business? Are bank-bills strictly a legal tender? When will the tender of current bank-bills be a sufficient tender in payment of a debt?

3. What is exchange? How is this transfer made? What is a bill of

one person, addressed to another person, directing him, absolutely and unconditionally, to pay a certain sum of money to a third person, named therein, and to charge the same to his account. A check is a bill of exchange drawn upon a bank or individual banker, and is made payable on demand. If drawn payable at a future day, it is not strictly a check, but a bill of exchange.

4. The following are the parties to a promissory note:

The party who makes the promissory note is called the *maker*.

The person to whom it is made payable is called the *payee*.

Every payee who writes his name upon the back of the note is called the *indorser*.

Every other person who writes his name upon the back of the note is called an *indorser*.

Bank-bills are signed by the president and cashier of the bank, and the bank becomes the maker, acting through these officers. The following are the parties to a bill of exchange:

The person who makes the bill of exchange is called the *drawer*.

The person to whom the bill of exchange is to be paid is called the *payee*.

The person to whom the bill of exchange is directed is called the *drawee*.

When the drawee accepts, in writing, the bill of exchange, he is called the *acceptor*.

When the payee writes his name upon the back of the bill of exchange, he is called the *indorser*.

Every other person who writes his name upon the back of the bill of exchange is called an *indorser*.

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exchange? What is a check? How made payable? If drawn payable at a future day?

4. What is the party who makes the promissory note called? Who is the payee? Who are indorsers? By whom are bank-bills signed? How does the bank become the maker? Who is the drawer of a bill of exchange? Who is the payee? Who is the drawee? Who is the ac

The following are the parties to a check :

The person who makes the check is called the *drawer*.

The person to whom the check is to be paid is called the *payee*.

The bank upon which it is drawn is the *drawee*.

When the payee writes his name upon the back of the check, he is called the *indorser*.

5. Commercial paper must be in writing. The writing may be in ink or in pencil. It may be written on paper or parchment. It may all be printed, except the signature. The signature is usually in the handwriting of the maker. If the maker be unable to write his name, it may be written by another person, at his request, and in his presence. This becomes the maker's signature. It may be made by his agent, duly authorized thereto in his absence. When the signature is made by a third person, at the request of the maker, and in his presence, a cross or mark is sometimes made by the maker, which cross or mark should be attested by the person who writes the maker's name. The signature made by mark is usually in the following form :

\$500.

NEW YORK, June 8, 1865.

One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

Witness: JOHN FOSTER.

His  
WILLIAM X BLAKE  
mark.

6. If John Foster be the agent of William Blake, authorized to sign for him and in his name, the signature should be written as in the following form :

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ceptor? Who are indorsers? Who is the drawer of a check? Who is the payee? Who is the drawee? Who are indorsers?

5. How must commercial paper be made? In what? Upon what? What part of it may be printed? In whose handwriting is the signature usually? If the maker be unable to write his name? Whose signature does this become? In what other way may it be made in the maker's absence? When the signature is made by a third person, in the presence of the maker, what is sometimes done by the maker? By whom should such cross or mark be attested? What is the form of the promissory note executed by mark?

6. If John Foster be the agent of William Blake, authorized to sign



\$500.

NEW YORK, June 8, 1865.

One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

WILLIAM BLAKE,

By JOHN FOSTER.

The signature, whether it be that of the maker, or indorser, or acceptor, may be made either by the person himself, or by another person in his presence, at his request, or by his agent, duly authorized. If commercial paper is made, or indorsed, or accepted by a firm, the signature is made by attaching the name of the firm, which each partner has authority to attach. A person or partnership may sign or indorse his name, or the name of the firm, in blank; and if the instrument is filled up by a person duly authorized, it will bind the person or firm in the same manner as if it had been filled up before it was signed.

## CHAPTER XCII.

### HISTORY OF COMMERCIAL PAPER.

1. Of the different classes of commercial paper, bills of exchange are of the most ancient origin. They were invented to supply the necessities of commerce. Their origin is involved in much obscurity. They were used in England in the thirteenth century. The advantage of bills of exchange may be illustrated as follows. If A. be about to make a voyage from New York to London, and he has in his possession ten thousand dollars in gold and silver which he wishes to use in London, he may deposit the ten thousand dollars with some banker in New York

for him, and in his name, in what form is the signature made? How may the signature of the maker, indorser, or acceptor be made? How commercial paper is made, or indorsed, or accepted by a firm? What is the effect if a person or partnership sign or indorse in blank?

1. Which of the classes of commercial paper is of the most ancient origin? For what purpose were they invented? In what is their origin?

city, and receive from him a bill of exchange on some banker in London. When A. arrives in London, he may present the bill of exchange to the banker upon whom it is drawn, and receive the ten thousand dollars, thereby avoiding the expense and risk of transmitting the gold and silver from New York to London.

2. Bills of exchange were in their origin payable, absolutely and unconditionally, in gold and silver, at the time specified therein. They were divided into two classes, foreign and inland. Foreign bills of exchange are those drawn by a person in one State or country upon a person in another State or country. Inland bills of exchange are those drawn by a person in one State or country upon another person in the same State or country.

2. The *par* of exchange is measured by the intrinsic value of the coin. The intrinsic value of the coin depends upon the amount of pure gold or silver and the amount of alloy in any given weight. The *rate* of exchange between two countries, is the actual price at which a bill drawn by a person in one State or country upon a person in another State or country can be bought. The rate of exchange is made to differ, first, by the difference of weight or fineness of the coin; second, by the increase or diminution of the demand for such bills of exchange.

4. The general theory upon which bills of exchange rest is—1. That the drawer has funds in the hands of the drawee; 2. That the drawer sells or assigns to the payee so much of these funds as is named in the bill; 3. That when the drawee accepts the bill of exchange, it is an appropriation of so much of those funds for the use of the

involved? When were they introduced into England? How may the advantage of bills of exchange be illustrated?

2. How were bills of exchange in their origin payable? Into what two classes were they divided? What are foreign bills of exchange? What are inland bills of exchange?

3. How is the *par* of exchange measured? Upon what does the intrinsic value of the coin depend? What is the *rate* of exchange between two countries? How is the rate of exchange made to differ?

4. What is the general theory upon which bills of exchange rest?

payee, or other person holding under the payee; 4. That this amount ceases henceforth to be the money of the drawer; 5. That it becomes the money of the payee, and those holding under him, in the hands of the acceptor. After such acceptance, the acceptor becomes the primary debtor of the payee, or other holder. The drawer and indorsers are only collaterally liable to the holder upon default of payment by the acceptor.

5. Bills of exchange in familiar language are known as orders. A. calls upon B. for the payment of a debt. B. has a claim for an equal amount against C. B. instead of paying the money to A., gives A. an order on C. for the amount of his claim. This order is a bill of exchange. B. is the drawer. C. is the drawee, and A. is the payee. When A. presents the order to C., and C. accepts it, C. is called the acceptor. If A. write his name upon the back of the order, he becomes an indorser. The law by which bills of exchange are governed is known as the Law Merchant, or mercantile law. It is a system of customs acknowledged by all commercial nations. Blackstone calls it the custom of merchants, and ranks it under the head of particular customs, which comprise the great body of the common law. Being a part of the law, their existence need not be proved by witnesses, but the judges are bound to take notice of them *ex-officio*.

6. The next class of commercial paper in the order of time, after bills of exchange, is promissory notes. The origin of promissory notes is quite as obscure as that of bills of exchange. They were first used in England, about the middle of the seventeenth century. They were regarded as choses in action, which could not be assigned so as to give a third party a right to commence an action thereon. In the year 1704, during the reign of Queen

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After acceptance, who is the primary debtor? How only are the drawer and indorsers liable?

5. By what term are bills of exchange in familiar language known? Give the illustration. By what law are bills of exchange governed? What is the Law Merchant? What does Blackstone call it? Under

Anne, in England, Parliament passed an act entitled, "An act for giving like remedy upon promissory notes as is now used upon bills of exchange." The reasons for passing the act are set forth in the preamble, as follows:

"WHEREAS, it has been held that notes in writing signed by the party who makes the same, whereby such party promises to pay unto any other person or his order, any sum of money therein mentioned, are not assignable or indorsable over within the custom of merchants to any other person, and that such person to whom the sum of money mentioned in such note is payable, cannot maintain an action by the custom of merchants against the person who first made and signed the same, and that any person to whom such note shall be assigned, indorsed, or made payable, could not within the custom of merchants maintain any action upon such note against the person who first drew and signed the same. Therefore, to the intent to encourage trade and commerce, which will be much advanced if such notes shall have the same effect as inland bills of exchange, and shall be negotiated in like manner.

"Be it enacted, etc."

7. By this law, all promissory notes for the payment of any sum of money mentioned in such notes, are made assignable or indorsable in the manner that inland bills of exchange are, or may be assignable or indorsable according to the custom of merchants. Since the passage of this law, all promissory notes payable absolutely and unconditionally in money only, have been known and recognized as "*promissory notes within the statute.*" All promissory notes payable in any other property but money, and all conditional promissory notes, have been known as *promissory notes not within the statute*, and they are entitled to

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what rank does he rank it? Is it necessary to prove the existence of such customs by witnesses? What are the judges bound to do?

6. What is the next class of commercial paper in the order of time after bills of exchange? Is the origin of promissory notes well known? When were they first used in England? How were they regarded? In what year did Parliament pass an act in reference to promissory notes? During whose reign? What was the title of the act? In what were the reasons for passing the act set forth? Were promissory notes then assignable or indorsable within the custom of merchants? Could the assignee or indorsee maintain an action thereon? With what intent was this law passed?

7. What were made assignable or indorsable by this law? In what manner? Since the passage of this law, what promissory notes have been known and recognized as promissory notes within the statute?

none of the privileges and presumptions which belong to promissory notes within the statute, accorded to them by the custom of merchants.

8. Certain privileges are annexed to bank-bills, bills of exchange, checks, and promissory notes within the statute, which do not belong to any other unsealed instruments. They are presumed to be founded upon a valuable consideration between the original parties, whether the words "*value received*" appear upon the face of the paper or not. In an action between the original parties, the defendant may allege a want of consideration in his answer; and if he establish a want of consideration on the trial, judgment will be rendered for the defendant. Generally, when the paper has passed into the hands of a third party, the presumption of a valuable consideration between the original parties becomes absolute and cannot be rebutted. The indorsement of commercial paper within the statute is presumed to be founded upon a valuable consideration. This presumption may be rebutted between the indorser and his immediate indorsee. Generally, when this paper has passed beyond the indorsee, the presumption that it was indorsed for a valuable consideration becomes absolute.

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What as promissory notes not within the statute? To what are promissory notes not within the statute not entitled?

8. To what are certain privileges annexed which do not belong to any other unsealed instruments? Upon what are they presumed to be founded? In an action between the original parties, what may the defendant allege in his answer? If the defendant establish his allegation on the trial, for whom must judgment be rendered? What is the general rule as to the presumption of value between the original parties, when the promissory note has passed into the hands of third parties? What is the presumption as to the indorsement of commercial paper within the statute? Between what parties may this presumption be rebutted? What is the general rule when such paper has passed beyond the indorsee?

## CHAPTER XCIII.

## NEGOTIABILITY OF COMMERCIAL PAPER.

1. COMMERCIAL paper is divided into two classes—negotiable and non-negotiable. *Negotiable commercial paper* is that which may be freely transferred from one owner to another, so as to pass the right of action to the holder, without being subject to any set-offs, or legal or equitable defences existing between the original parties, if transferred for a valuable consideration before maturity, and received without notice of any defect therein. *Non-negotiable commercial paper* is that which is made payable to the payee therein named. It may be passed from one owner to another by assignment, or by indorsement, but it passes subject to all set-offs and legal or equitable defences existing between the original parties. Negotiable paper is made payable to the payee therein named or to his order, or to the payee or bearer, or to bearer; or some similar term is used showing that the maker intends to give the payee authority to transfer it to a third party, free from all set-offs or equitable or legal defences existing between himself and the payee.

2. A set-off is a debt already due to the defendant on the part of the plaintiff, or from the person through whom his title is derived, which defendant claims to have allowed to him in discharge of a part or the whole of the demand made by the plaintiff. Fraud, duress, circumvention, and taking undue advantage, will be a sufficient defence

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1. Into what two classes is commercial paper divided? What is negotiable commercial paper? What is non-negotiable commercial paper? How is negotiable paper made payable?

2. What is a set-off? What will be sufficient defences if the action be between the original parties? If the paper be non-negotiable? If

if the action is between the original parties. They will be a sufficient defence between the maker and third parties, if the paper be non-negotiable. These defences cannot be set up in an action by a subsequent holder with a perfect title, if the paper be negotiable. If the consideration between the original parties were money made by betting, or if the consideration were usurious, this, by the statutes of the State of New York, would render the paper absolutely void, whether the action be between the original parties or be commenced by a subsequent holder.

3. The title to negotiable paper passes from one owner to another by delivery, if made payable to payee or bearer, or to bearer. It passes by indorsement and delivery, if made payable to payee or order. The title to non-negotiable paper passes by a mere verbal assignment and delivery, or by indorsement and delivery. In a promissory note there are two original parties—the maker and the payee. The obligation of the maker is absolute, and continues until the note is presumed to have been paid under the Statute of Limitations. The maker is the primary debtor. In a bill of exchange there are three parties, the drawer, the drawee, and the payee. When the drawee accepts the bill, he becomes the primary debtor upon the bill of exchange.

4. If the payee were obliged to enforce the payment of a promissory note within the statute, he would draw his complaint, under the Code, in the following form :

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the paper be negotiable, and the action is brought by a third party with a perfect title? If the consideration between the original parties were money won by betting, or if the consideration were usurious, what would be the effect by the statute of the State of New York?

8. How does the title to negotiable paper pass from one owner to another? How does the title to non-negotiable paper pass from one owner to another? In a promissory note, who are the original parties? Is the obligation of the maker absolute or conditional? How long does it continue? Who is the primary debtor? How many parties to a bill of exchange? After acceptance, who is the primary debtor?

4. If the payee of a promissory note within the statute were obliged to enforce the payment, what would be the form of the complaint under the Code?

SUPREME COURT,  
City and County of New York.

JOHN B. ASTOR }  
against  
WILLIAM BLAKE. }

The complaint of the plaintiff shows to this court—

I. That the defendant, at the city of New York, on the eighth day of June, 1865, made his promissory note in writing, and delivered the same to plaintiff, of which the following is a copy :

"\$500. NEW YORK, June 8, 1865.

"One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

"WILLIAM BLAKE."

II. That there is now due to plaintiff thereon from defendant the sum of five hundred dollars, with interest from the eleventh day of July, 1865.

Wherefore, plaintiff demands judgment against the defendant for the sum of five hundred dollars, with interest thereon from the 11th day of July, 1865.

W. B. WEDGWOOD, Plaintiff's Attorney.

City and county of New York, ss. :

John B. Astor, the plaintiff above named, being duly sworn, says that the foregoing complaint is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

JOHN B. ASTOR.

Sworn before me, this 11th }  
day of June, 1865, }

JOHN FOSTER,  
Commissioner of Deeds.

5. In every complaint there must be—1. The title ; 2. The commencement ; 3. The statement of facts constituting a cause of action ; 4. The demand for judgment ; 5. The verification. The title comprises the name of the court in which the action is brought, the name of the county in which it is to be tried, the name of the plaintiff, and the name of the defendant. The commencement is simply an introduction to the statement of facts. The

5. What must every complaint contain? Of what is the title composed? What is the commencement? How must the facts constituting



facts constituting the cause of action must be stated plainly and concisely, without unnecessary repetition. The demand for judgment must necessarily follow from the facts stated. In the subsequent forms we shall omit the title, the commencement, the demand for judgment, and the verification.

6. If the commercial paper be in a foreign language, it may be set forth in the complaint in that language, followed by the translation, preceded by the words "of which the following is a translation." All pleadings under the Code must be in the English language. The translation meets this requirement. Instead of setting forth in the statement of facts constituting the cause of action a copy of the commercial paper, as in the above form, it may be set forth according to its legal effect. Messrs. Field, Noyes, and Bradford, in their book of forms adapted to the Code, set forth the legal effect of the above note, in the statement of facts, in the following language :

(Title.)

(Commencement.)

I. That at the city of New York, on the 8th day of June, 1863, defendant, by his promissory note, promised to pay to the plaintiff, or order, five hundred dollars, one month after date.

II. That he has not paid the same.

(Demand.)

(Verification.)

7. Where the maker of a promissory note makes the same by his agent, duly authorized, that fact must be stated in the complaint. If William Blake, by John

the cause of action be stated? What must follow the facts stated? What will be omitted in subsequent forms?

6. If the commercial paper be in a foreign language, how may it be set forth in the complaint? In what language does the Code require all pleadings to be made? Instead of setting forth a copy of the commercial paper in the complaint, in what other way may it be set forth? What is the form of setting forth commercial paper, according to its legal effect, as given by Messrs. Field, Noyes, and Bradford?

7. If the maker of a promissory note makes the same by his agent, duly authorized, where must that fact appear? If William Blake, by

Foster, his agent, make a promissory note, that fact should be set forth in the complaint, as follows :

(Title.)

(Commencement.)

I. That the defendant, at the city of New York, on the 8th day of June, 1865, by one John Foster, his agent, duly authorized thereto, made his promissory note, in writing, and delivered the same to the plaintiff, of which the following is a copy :

" \$500.

New York, June 8, 1865.

" One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

WILLIAM BLAKE,

" By JOHN FOSTER."

II. That there is now due to plaintiff thereon, from defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

8. When a promissory note is payable in any thing but money, it does not come within the statute. There is no presumption that it is founded upon a valuable consideration. A consideration must be alleged in the complaint, and proved on the trial. The acknowledgment of a consideration in such promissory note, by inserting the words "*value received*," is sufficient to cast upon the defendant the burden of proof that there was no consideration. The acknowledgment of "*value received*," raises the presumption that the note was given for value; but this presumption may be rebutted by the defendant. In a complaint on such a note, the facts are set forth in the following form :

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John Foster his agent, make a promissory note, what is the form of complaint on such note ?

8. When is a promissory note not within the statute? What presumption does not arise? What must be alleged in the complaint, and proved on the trial? If the words "*value received*" be inserted in such note, what is the effect? What presumption do the words "*value received*" raise? Can this presumption be rebutted? In a complaint on such a note, in what form are the facts set forth?

(Title.)

(Commencement.)

I. That defendant, at the city of New York, on the 8th day of June, 1865, made his promissory note, in writing, and delivered the same to plaintiff for value received, of which the following is a copy :

"\$500.

NEW YORK, June 8, 1865.

"One month after date, for value received, I promise to pay to John B. Astor, or order, five hundred dollars in wheat, at one dollar per bushel, at No. 125 Washington-street, New York city.

"WILLIAM BLAKE."

II. That at the maturity of said note, the same was duly presented for payment according to the purport thereof, but was not paid, nor any part thereof; and defendant is now justly indebted to plaintiff thereon in the sum of five hundred dollars damages, with interest from the 8th day of July, 1865.

(Demand.)

(Verification.)

9. When the payment of a promissory note is conditional, it does not come within the statute. In an action upon a conditional promissory note, the facts constituting the cause of action are set forth in the complaint, in the following form :

(Title.)

(Commencement.)

I. That the defendant, at the city of New York, on the 8th day of June, 1865, made his promissory note, in writing, and delivered the same to plaintiff for value, of which the following is a copy :

"\$500.

NEW YORK, June 8, 1865.

"One year after date, for value received, I promise to pay John B. Astor five hundred dollars, in case the proceeds of the farm I have this day bought of him shall exceed the sum of one thousand dollars.

"JOHN FOSTER."

II. Plaintiff further shows, on information and belief, that the proceeds of said farm did, before the expiration of one year, exceed the sum of one thousand dollars, of which defendant, on the 8th day of June, 1866, at the city of New York, had due notice, and payment of said note was then and there duly demanded; but said note has not been paid, nor any

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9. If the payment of the promissory note is conditional? In a complaint upon a conditional promissory note, how are the facts constituting the cause of action set forth?

part thereof; and there is now due to plaintiff thereon, from defendant, the sum of five hundred dollars, with interest thereon from the 8th day of June, 1866.

10. When an action is commenced by the payee of a bill of exchange against the acceptor, who accepted the same, but failed to pay it at maturity, the facts constituting the cause of action are stated in the complaint, in the following form :

(Title.)

(Commencement.)

I. That defendant, at the city of New York, on the 8th day of June, 1865, accepted a certain bill of exchange, in writing, and delivered the same to plaintiff for value, of which the following is a copy :

Accepted.  
WILLIAM BLAKE.

"\$500. NEW YORK, June 8, 1865.  
"One month after date, pay to John B. Astor, or order, five hundred dollars, value received, and put the same to my account.  
"JOHN FOSTER.  
To WILLIAM BLAKE,  
New York City."

II. That there is now due to plaintiff thereon, from defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

11. If the facts were stated in the complaint according to their legal effect, without inserting a copy of the bill of exchange, they would be set forth as follows :

(Title.)

(Commencement.)

I. That, at the city of New York, on the 8th day of June, 1865, one John Foster made his certain bill of exchange, in writing, dated on that day, directed to defendant, William Blake, and thereby requested defendant to pay to plaintiff, or order, the sum of five hundred dollars,

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10. When an action is commenced by the payee, upon a bill of exchange, against the acceptor, who accepted the same, but failed to pay it at maturity, how are the facts constituting the cause of action stated in the complaint?

11. If the facts were stated in the complaint according to their legal effect, without inserting a copy of the bill of exchange, in what form would they be set forth? If an action be brought on two promissory

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one month after the date thereof, for value received, and delivered the same to plaintiff.

II. That defendant, on presentment of said bill of exchange, duly accepted the same.

III. That the said bill of exchange has not been paid, nor any part thereof; but the defendant is now justly indebted to plaintiff in the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

Where an action is brought on two promissory notes, or two bills of exchange, the facts constituting each cause of action must be separately stated. When a bill of exchange has been accepted by an agent, that fact must be set forth in the complaint, as in the like case in promissory notes.

12. When a promissory note is made payable at a certain time after sight, presentment and notice that the maker is required to pay the note according to the terms thereof, are conditions which are necessary to fix the time of payment, and must be alleged in the complaint. In an action on such a note, the facts constituting the cause of action are set forth as follows:

(Title.)

(Commencement.)

I. That the defendant, at the city of New York, on the 8th day of June, 1865, made his promissory note, in writing, and delivered the same to plaintiff, of which the following is a copy:

"\$500.

NEW YORK, June 8, 1865.

"One month after sight, I promise to pay John B. Astor, or order, five hundred dollars, value received.

WILLIAM BLAKE."

II. That on the first day of July, 1865, at 128 Broadway, in the city of New York, said note was presented to the defendant, William Blake, with notice that payment was required according to the terms thereof.

notes, or two bills of exchange, how must the facts be stated? If a bill of exchange has been accepted by an agent?

12. When a promissory note is made payable at a certain time after sight, what are conditions necessary to fix the time of payment? Must they be alleged in the complaint? In an action upon such a note, how are the facts constituting the cause of action set forth in the complaint?

III. That there is now due to the plaintiff thereon, from the defendant, the sum of five hundred dollars, with interest from the 4th day of August, 1865.

(Demand.)

(Verification.)

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## CHAPTER XCIV.

### THE PRINCIPAL PARTS OF COMMERCIAL PAPER.

1. In examining the forms of promissory notes and bills of exchange, our attention should be directed to—  
1. The place where the paper is made; 2. The date;  
3. The time of payment; 4. The *promise* in notes, and the *order* in bills; 5. The payee; 6. The amount; 7. The acknowledgment of value received; 8. The signature of the maker; 9. The drawer of a bill; 10. The place of payment. In order to ascertain whether a bill of exchange be foreign or inland, the place where it was made should appear upon the face of the bill. If the place where a bill of exchange or a promissory note was made be omitted, it may be proved by parol evidence.

2. Commercial paper may be ante-dated or post-dated. If it become necessary to prove the true date, this may be done by parol evidence. The error in the date must be alleged in the complaint, whenever it is necessary to

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1. To what points should our attention be directed in examining the forms of promissory notes and bills of exchange? In order to ascertain whether a bill of exchange is foreign or inland, what should appear upon its face? If the place where made be not on the bill or note, how may the place be proved?

2. How may commercial paper be dated? If it becomes necessary to prove the true date, how may this be done? What must be alleged in the complaint, when it is necessary to prove the true date? How are the facts constituting the cause of action set forth in the complaint, in such case? For what purpose is the date important? If it is without date, how is the time computed? If the day the note was made cannot be ascertained?

prove the true date. The facts constituting the cause of action are in such case stated as follows :

(Title.)

(Commencement.)

I. That the defendant, at the city of New York, on the 8th day of June, 1865, made his promissory note in writing, bearing date, by mistake, on the 8th day of January, 1865, whereas, in truth, it was intended to bear date on the said 8th day of June, and delivered the same to plaintiff, of which the following is a copy :

" \$500.

NEW YORK, January 8, 1865.

" One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

WILLIAM BLAKE."

II. That there is now due to plaintiff thereon, from defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

The date is important, for the purpose of ascertaining the time of payment. If it is without date, the time will be computed from the day the note was made. If that cannot be ascertained, then the time is computed from the first day its existence can be established.

3. The *time* of payment should be stated in the note or bill. If no time of payment is stated, it is payable on demand. The time of payment must be a period of time which must inevitably happen, in order to bring it within the statute. The following has been decided to be not a good promissory note within the statute, on the ground of uncertainty as to the time of payment :

\$500.

NEW YORK, June 8, 1865.

I promise to pay John B. Astor five hundred dollars when he shall become of age, value received.

WILLIAM BLAKE.

The following is a good promissory note within the

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8. What further should be stated in the bill or note? If no time is stated? What is necessary, as to the time of payment, to bring it within the statute? What form of promissory note has been decided to be not within the statute, on the ground of uncertainty as to the time of payment? What form has been decided to be within the statute? If the promise be to pay a certain sum at the death of the payee, or of

statute, as it will become payable on the 8th day of June, 1867, whether the payee be living or not:

\$500.

NEW YORK, June 8, 1865.

I promise to pay John B. Astor, when he becomes of age, to wit, on the 8th day of June, 1867, five hundred dollars, value received.

WILLIAM BLAKE.

A written promise to pay a certain sum of money *at the death* of payee, or of some other person, or at a fixed time thereafter, is a valid promissory note within the statute, because it must inevitably become due at some future time, although the precise time is uncertain. To the time stated in the instrument days of grace are usually added in computing the time of payment.

4. There must be an express *promise* to pay upon the face of the promissory note. The phrases,

"I promise to pay to,"

"I promise to be responsible to,"

"I promise to pay, or cause to be paid to,"

"I promise that A. B. shall receive,"

are equally valid in legal effect. The mere acknowledgment of indebtedness in writing, without an express promise to pay the debt, is not sufficient to constitute a promissory note within the statute. Such an acknowledgment is frequently made in an abbreviated form, as follows:

NEW YORK, June 8, 1865.

John B. Astor,

I O U \$500

WILLIAM BLAKE.

An acknowledgment of a debt in this form is called an I O U. It is simply evidence of an account stated. It

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some other person? What is added to the time stated in the bill or note?

4. Where must the promise appear? What form of promise may be used? If it be only an acknowledgment of indebtedness, without an express promise? In what form is such an acknowledgment made? What is the acknowledgment of a debt in this form called? If an I O U contain a promise to pay? Give a form which would be within the statute? Is there any precise language for the order? If the



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does not amount to a promissory note. But if an I O U contains a promise to pay, it will be a promissory note within the statute. The following I O U is a valid promissory note within the statute:

NEW YORK, June 8, 1865.

John B. Astor,

I O U \$500, payable July 4th, 1865.

WILLIAM BLAKE

The order in a bill of exchange may be varied. If the language be that the drawer requests the drawee to pay to the payee a certain sum of money, the language of the bill must import a request *as a right*, and not *as a favor*. A bill of exchange must demand a right, and not merely ask a favor.

5. The person to whom commercial paper is made payable must be clearly expressed upon the face of the paper, or be positively identified by the language used. Parol evidence is not admissible to show to whom it is payable. A promissory note payable to the order of John B. Astor, is payable to John B. Astor or order. When made payable to bearer, it is payable to the person who is or may be the bearer. The following is a good promissory note:

Received, New York, June 8, 1865, of John B. Astor, five hundred dollars, which I promise to pay in one month.

WILLIAM BLAKE

Commercial paper may be signed, leaving a blank for the payee's name. It may be filled up by any *bona-fide* holder, with his own name as payee.

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language be that the drawer requests the drawee to pay, what must be the nature of the request? What must a bill of exchange demand?

5. Is it necessary that the payee be clearly expressed in the note or bill? Is parol evidence admissible to show to whom it is payable? If made payable to the order of John B. Astor? When made payable to bearer? What is the form of a receipt, which amounts to a promissory note? If the commercial paper be signed in blank, as to the payee's name?

6. In commercial paper within the statute, the exact amount to be paid must be stated, and it must not be accompanied by any language which may make it more or less. If the sum expressed in the margin of the bill or note differs from the sum expressed in words in the body of the instrument, the words are deemed the true sum; and parol evidence cannot be given to show that the sum intended is the sum mentioned in figures in the margin.

7. In commercial paper within the statute, it is immaterial whether the words "value received" be inserted or not. The law raises the presumption that it is founded on a valuable consideration, even when those words are omitted. In commercial paper not within the statute, the words "value received" must be inserted, to raise the presumption of value, and to cast the burden of proof upon the defendant, to show that it was given without value.

8. Commercial paper may be made by one or by several persons. When made by more than one, it is presumed to be the joint obligation of the makers. Words of joinder are not necessary to raise the presumption that it is a joint obligation; but words of severance are necessary to produce a several responsibility. In an action upon joint commercial paper, the action must be brought against the makers jointly. If the obligation be joint and several, the action must be brought jointly against all, or severally against each. The following is a joint promissory note of all the partners:

6. What is the rule within the statute as to the amount? If the sum expressed in the margin of the bill or note differs from the sum expressed in words in the body of the instrument, which is deemed the true sum? Can parol evidence be introduced to show which was intended?

7. What is the effect of introducing the words "value received" into commercial paper within the statute? What presumption does the law raise? If the commercial paper be not within the statute?

8. By whom may commercial paper be made? When made by more than one, what is presumed? Are words of joinder necessary to raise this presumption? Are words of severance necessary to produce a several responsibility? How must the action upon joint commercial paper be brought? If the obligation be joint and several? Give the two forms

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**\$500.**

**NEW YORK, June 8, 1865.**

One month after date, we promise to pay John B. Astor, or order, five hundred dollars, value received.

**WILLIAM BLAKE & Co.**

The following is also a joint promissory note of the makers :

**\$500.**

**NEW YORK, June 8, 1865.**

One month after date, we promise to pay John B. Astor, or order, five hundred dollars, value received.

**WILLIAM BLAKE  
JOHN FOSTER.**

The following is a joint and several promissory note of both makers :

**\$500.**

**NEW YORK, June 8, 1865.**

One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

**WILLIAM BLAKE  
JOHN FOSTER.**

The following is also a joint and several promissory note :

**\$500.**

**NEW YORK, June 8, 1865.**

One month after date, we jointly and severally promise to pay John B. Astor, or order, five hundred dollars, value received.

**WILLIAM BLAKE  
JOHN FOSTER.**

The following has been frequently decided to be a joint promissory note of both makers, as to the payee and subsequent holders :

**\$500.**

**NEW YORK, June 8, 1865.**

One month after date, we promise to pay John B. Astor, or order, five hundred dollars, value received.

**WILLIAM BLAKE, Principal  
JOHN FOSTER, Surety.**

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of joint promissory notes. Give the two forms of joint and several promissory notes. Give the form signed by principal and surety. As to whom is this a joint promissory note? As between themselves

As between themselves, they hold the position of principal and surety. If it were written, *I promise*, and were signed in the same manner, it would be the joint and several note of both parties.

9. In an action against partners, as makers of a promissory note or as acceptors of a bill of exchange, or as indorsers or drawers, a partnership must be alleged in the complaint. If there be no allegation that the defendants were partners, nor that they acted under their firm-name in making, accepting, or indorsing the note or bill, proof that one of the defendants made the signature of the firm is not sufficient to bind the firm. Where the fact of partnership is likely to be drawn in question, it is better to aver the fact distinctly. When an action is brought against partners as makers of a promissory note, the name of each general partner must be set forth in the title as defendants; and the fact of partnership is set forth in the complaint, in the following form:

(Title.)

(Commencement.)

I. That on the 8th day of June, 1865, the defendants were partners, doing business under the firm-name of William Blake & Co., and that on that day, at the city of New York, they made their promissory note in writing, under their said firm-name, and delivered the same to plaintiff, of which the following is a copy:

"\$500.

NEW YORK, June 8, 1865.

"One month after date, we promise to pay John B. Astor, or order, five hundred dollars, value received.

"WILLIAM BLAKE & Co."

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what position do they hold? If it were written, "I promise," and signed in the same manner?

9. In an action against partners, what must be alleged? If there be no allegation that defendants acted as partners? When an action is brought against partners as makers of a promissory note, what names must be set forth in the title as defendants? How is the fact of partnership alleged in the complaint? If the action be commenced by partners as payees, whose names must appear in the title as plaintiffs? What is the rule under the Code as to a dormant partner? As to a special partner? When the right of action depends upon the existence of a partnership, what is necessary? What must the plaintiffs show? How is the fact of partnership of the plaintiffs alleged in the complaint?

II. That there is now due to plaintiff thereon, from defendants, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

When an action is commenced by partners on a promissory note made payable to the order of the firm, the action must be commenced in the name of all the partners. Under the Code, a dormant partner must be made a co-plaintiff. A special partner, under the statute of New York, need not be made a co-plaintiff. When the right of action depends upon the existence of a partnership, a distinct averment of a partnership is necessary. The plaintiffs must show themselves to be the persons composing the firm. The fact of the partnership of plaintiffs, who sue as payees of a promissory note, is set forth in the complaint, as follows :

(Title.)

(Commencement.)

I. That on the 8th day of June, 1865, plaintiffs were partners, doing business under the firm-name of William Blake & Co., and that on that day, at the city of New York, the defendant made his promissory note in writing, and delivered the same to plaintiffs, under their firm-name of William Blake & Co., of which the following is a copy :

" \$500.

NEW YORK, June 8, 1865.

" One month after date, I promise to pay William Blake & Co. five hundred dollars, value received.

" JOHN FOSTER."

II. That there is now due to plaintiffs thereon, from defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

10. When the payees are a firm, and one of the partners dies, the surviving partner may sue in his own name; but the death of the deceased partner, and the plaintiff's

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10. When the payees are partners, and one of the partners dies, how is the action brought? What must be stated in the complaint? If the

Survivorship, must be stated in the complaint. If the note were made to the surviving partner only, although the consideration proceeded from the partnership, it will not be necessary to state the death of the deceased partner, and the survivorship of the plaintiff. When the action is commenced by a surviving partner, the facts showing the right of the surviving partner to sue in his own name are set forth in the following form :

(Title.)

(Commencement.)

I. That on the 8th day of June, 1865, the plaintiff and one John Foster were partners, doing business under the firm-name of William Blake & Co., and that on that day, at the city of New York, the defendant made his promissory note in writing, and delivered the same to them, under their firm-name of William Blake & Co., of which the following is a copy :

"\$500.

NEW YORK, June 8, 1865.

"One month after date, I promise to pay William Blake & Co. five hundred dollars, value received.

"JOHN B. ASTOR."

II. That on the 25th day of June, 1865, at the city of New York, the said John Foster died, leaving this plaintiff the sole surviving partner of said firm.

III. That there is now due to plaintiff thereon, from defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

When the promissory note is made by a firm, and one of the partners dies, the action must be brought against the surviving partner on such note, and the death of the deceased partner and the survivorship of the defendant must be stated in the complaint. These facts are set forth in the complaint, in the following form :

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note were made to the surviving partner only, although the consideration proceeded from the partnership? When the action is commenced by a surviving partner, how are the facts showing the right of the surviving partner to sue in his own name set forth? When the promissory note is made by a firm, and one of the partners dies, against whom must the action be brought? What must be stated in the complaint? How

(Title.)

(Commencement.)

I. That on the 8th day of June, 1865, the defendant and one John Foster were partners, doing business under the firm-name of William Blake & Co., and that on that day, at the city of New York, they made their promissory note in writing, under their firm-name of William Blake & Co., and delivered the same to plaintiff, of which the following is a copy :

" \$500.

NEW YORK, June 8, 1865.

" One month after date, we promise to pay John B. Astor, or order, five hundred dollars, value received.

" WILLIAM BLAKE & Co."

II. That on the 25th day of June, 1865, at the city of New York, the said John Foster died, leaving defendant the sole surviving partner of said firm.

III. That there is now due to plaintiff thereon, from defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

When the plaintiff or defendant is a corporation, it is the practice to allege that fact in the complaint. That fact is generally alleged in the complaint, in the following form :

(Title.)

(Commencement.)

I. That the defendants are a corporation created by and under the laws of the State of New York, organized pursuant to an act of the Legislature, entitled, " An act to authorize the business of banking," passed April 18th, 1838, and the acts amending the same.

II. That the defendant, at the city of New York, on the 8th day of June, 1865, being such corporation, by their agents duly authorized thereto, made their certain promissory note in writing, and delivered the same to plaintiff, of which the following is a copy :

" \$500.

NEW YORK, June 8, 1865.

" One month after date, the American Exchange Bank will pay to John Foster, or order, five hundred dollars, value received.

" JOHN B. ASTOR, Pres.

" WILLIAM BLAKE, Cash."

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are these facts set forth in the complaint? When the plaintiff or defendant are a corporation, what is it the practice to allege? How is that fact generally alleged in the complaint?

III. That there is now due to plaintiff thereon, from defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

11. If a promissory note is to be paid at a particular place, that place must be stated in the body of the note. Parol evidence is not admissible to show the place of payment. The place of payment of a bill of exchange is understood to be the place where the drawee resides, or where on the face of the bill it is addressed to him, unless some other place be stated on the face of the bill. As a general rule, unless required by statute, the place of payment need not be expressly stated. If the address specify no place of payment, the bill is payable where the drawee accepts it, or payable at any place where the acceptor may be found when it becomes due. There is generally in bills of exchange a statement of advice, as—“Put the same to my account,” “Put the same to the account of A. B.,” “Put the same to account as per advice.” But none of these forms are essential to a bill of exchange, but a mere matter of mercantile convenience. If the bill be drawn “as per advice,” the drawee is not bound to accept or pay without advice. The general usage in America is for the drawer to deliver a set of three parts of the bill to the payee, or holder, any one part of which set being paid, the others are void. Bills of exchange and promissory notes under seal are not entitled to the peculiar privileges of commercial paper.

12. When the signature is attested, it must be proved

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11. If a promissory note is to be paid at a particular place? What evidence is not admissible to show the place of payment? What is understood to be the place of payment of a bill of exchange? Is it necessary to state the place of payment? If the address specify no place of payment? What statement of advice is generally inserted in bills of exchange? Are any of these forms essential? If the bill be drawn “as per advice,” is the drawee bound to accept or pay it without advice? What is the general usage in America? Are bills of exchange and promissory notes under seal entitled to the privileges of commercial paper within the statute?



by the subscribing witness, and not otherwise, unless the subscribing witness be absent from the State, or cannot be produced at the trial. The production of the witness on the stand is the best evidence. If the subscribing witness cannot be produced, a foundation must first be laid by showing a *fair, bona-fide*, and unavailing effort to procure the attendance of the witness. This foundation being laid, proof of the handwriting of the subscribing witness may then be introduced. If the handwriting of the witness cannot be proved, a foundation must first be laid by proving a *fair, bona-fide*, and unavailing effort to prove the handwriting of the witness. This foundation being laid, the handwriting of the maker may then be proved.

The production of the subscribing witness is the *best evidence*.

The proof of the handwriting of the subscribing witness is *secondary evidence*.

The proof of the handwriting of the maker is a *third class* of evidence.

The admission of the maker may be introduced to prove his signature, whenever it is permitted to resort to the proof of his handwriting. In some of the States, the time of limitation is extended by the attestation of the signature to the note by a witness.

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12. When the signature is attested, how must it be proved? What is the best evidence? If the subscribing witness cannot be produced, what foundation must be laid before other evidence can be introduced? This foundation being laid, what proof may then be introduced? If the handwriting of the witness cannot be proved, what foundation must be laid before other evidence can be introduced? This foundation being laid, what proof may then be introduced? What is the best evidence? What is the secondary evidence in this case? What is the third class of evidence in this case? When may the admission of the maker be introduced? What is the effect produced upon limitation by attestation in some of the States?

## CHAPTER XCV.

### INDORSEMENT OF COMMERCIAL PAPER.

1. THE word *indorsement* signifies, *written upon the back*. The indorsement, however, may be made upon any part of the instrument. It may be made even upon a paper attached to the instrument. The indorsement may be—1. In blank, or in full; 2. In general, or restrictive; 3. Qualified, or conditional. The following is the form of an indorsement in blank:

JOHN B. ASTOR.

It is simply the name of the indorser, written upon the back of the instrument. When the indorser makes the instrument payable, by indorsement, to a particular person, such indorsement is an indorsement in full. The following is the form of an indorsement in full:

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1. What does the word *indorsement* signify? Where may the indorsement be made? Can it be made on another paper attached? In what different ways may it be made? What are indorsements in blank? What is an indorsement in full? If the indorsement be in full, what

Pay to John Foster  
the within.  
JOHN B. ASTOR.

When the indorsement is in full, the indorsee must indorse the same on transferring it to a subsequent holder. When the indorsement is in blank, the instrument may be transferred by mere delivery. The previous forms are general indorsements. The following is the form of a restrictive indorsement :

Pay the within to  
John Foster only.  
JOHN B. ASTOR.

An indorsement is restrictive when it expressly restricts

must the indorsee do on transferring it? When the indorsement is in blank, how may it be transferred? What kind of indorsements are the

the payment of the instrument to a particular person only, or for a particular purpose, or is made in favor of a person who cannot make a transfer to another. The indorser, whether the indorsement be in blank or in full, may qualify his indorsement, so as to avoid the usual obligations of an indorser. The following is a blank qualified indorsement:

Without recourse  
to me.  
JOHN B. ASTOR.

A conditional indorsement is one which involves some condition, upon the occurrence of which the validity of the indorsement is ultimately to depend. "Pay to John Foster, or his order, when he becomes of age," is a conditional indorsement. "Pay to John Foster, at maturity, unless, before payment, I give you notice to the contrary," is a conditional indorsement.

2. The primary debtor on a promissory note is the maker. The primary debtor on a bill of exchange is the acceptor. If the note or bill be within the statute, the maker and acceptor agree absolutely and unconditionally

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forms given? When is an indorsement restrictive? How may the indorser qualify his indorsement? What is the form of a qualified indorsement? What is the form of a restrictive indorsement? What is the form of an indorsement in full? What is the form of an indorsement in blank? What is a conditional indorsement? What language would form a conditional indorsement?

2. Who is the primary debtor in a promissory note? Who is the pri-

to pay the note or bill at maturity. They are entitled to the delivery of such note or bill to them as the vouchers of the payment, and as security against any further demand thereon. If the maker or acceptor pay the note or bill before maturity, and the note or bill is not surrendered, they will be liable to pay the same the second time to any subsequent *bona-fide* holder for value without notice, if the bill or note were negotiable. If the note or bill were payable to bearer or indorsed in blank, the maker or acceptor would be discharged by paying to any person in possession with an apparent lawful ownership accompanied with the surrender of the note or bill. If the note or bill is payable to order and is indorsed, the maker or acceptor is bound to ascertain the genuineness of the indorsement. If the indorsement be in full, the maker or acceptor is bound to ascertain that the person producing it is the identical indorsee. If the maker or acceptor pay it to any other than the true owner, he is not discharged by such payment.

3. It was formerly held that an action at law could not be sustained on a promissory note or bill of exchange after the same was lost, if made payable to bearer, or made payable to order and indorsed. This did not apply to negotiable paper which was actually destroyed, and its destruction accounted for, so that there were no possibility of the maker or acceptor's being called upon to pay the same a second time by a *bona-fide* holder.

4. By the Revised Statutes of the State of New York,

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may debtor in a bill of exchange? If the note or bill be within the statute, what do the maker and acceptor agree to do? To what are they entitled on such payment? If the maker or acceptor pay the note or bill before maturity, and the note or bill is not surrendered? If the note or bill were payable to bearer or indorsed in blank? If the note or bill is payable to order and indorsed, what is the maker or acceptor bound to ascertain? If the indorsement be in full? If the maker or acceptor pay it to any other than the true owner?

3. What was formerly held in reference to lost notes and bills if made payable to bearer, or made payable to order and indorsed? Did this apply to negotiable paper actually destroyed?

4. When a party to an action has been examined to prove the loss of an instrument in order to admit other proof of its contents, for what pur-

it is provided, that " whenever a party to any action shall have been permitted to prove by his own oath the loss of any instrument in order to admit other proof of the contents thereof, the adverse party may also be examined by the court on oath to disprove such loss and to account for such instrument. In any suit founded upon any negotiable promissory note or bill of exchange, or in which such note, if produced, might be allowed as a set-off in the defence of any suit, if it appear on the trial that such note or bill was lost while it belonged to the party claiming the amount due thereon, parol or other evidence of the contents thereof may be given on such trial, and, notwithstanding such note or bill was negotiable, such party shall be entitled to recover the amount due thereon, as if such note or bill had been produced. But to entitle a party to such recovery, he shall execute a bond to the adverse party in a penalty at least double the amount of such note or bill, with two sureties to be approved by the court in which the trial shall be had, conditioned to indemnify the adverse party, his heirs and personal representatives, against all claim by any other person on account of such note or bill, and against all costs and expenses by reason of such claim."

5. This bond of indemnity is only required where the lost paper is negotiable. If the plaintiff has destroyed the note sued upon without explanation, he cannot recover as upon a lost note. A note which is clearly proved to have been destroyed, is not a lost note within the statute providing for indemnity; but an action can be maintained

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pose may the adverse party be examined by the court? If in a suit founded on a negotiable promissory note or bill of exchange it appears on the trial that such note or bill was lost, while it belonged to the party claiming the amount due thereon, for what purpose may parol or other evidence be introduced? What shall such party recover? To entitle the party to such recovery, what must he execute? To whom? In what penalty? With how many sureties? By whom to be approved? What is the condition of the bond?

5. Where only is this bond required? If the plaintiff has destroyed the note? If the note is clearly proved to have been destroyed by some other than the plaintiff? Without what is neither the maker, acceptor,

upon it without indemnity. Neither the maker, acceptor, nor indorser is bound to make payment, without receiving the bill or note, if negotiable, as his voucher of payment, or without receiving a bond of indemnity against any future liability, if the bill or note be lost. The bond of indemnity should be tendered to the maker at the time of the demand; and a bond of indemnity should be tendered to the indorser at the time of service of notice that the note has been dishonored. Payment cannot be required of the indorser till proper steps have been taken to secure his immediate recourse against the principal.

6. When an action is commenced by the holder against the maker and payee, as indorser on a promissory note which has been lost, the following is the form of the complaint:

(Title.)

(Commencement.)

I. That at the city of New York, on the 8th day of June, 1865, the defendant, John Foster, made his promissory note in writing, and delivered the same to defendant, John B. Astor, of which the following is a copy:

JOHN B. ASTOR.

" \$500.

NEW YORK, June 8, 1865.

" One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

" JOHN FOSTER."

II. That the defendant, John B. Astor, indorsed the same for value, and delivered the same so indorsed; and thereafter, and before its maturity, it lawfully came to the possession of plaintiff for value.

III. That before the maturity of said note the same was lost, so that it could not be presented to the maker for payment at maturity; but a copy thereof was duly presented to the maker for payment, accompanied by a bond of indemnity, as required by statute in case of lost notes or bills; but the same was not paid, nor any part thereof.

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or indorser bound to make payment? What should be tendered to the maker on demand of payment of a lost note? What should be tendered to the indorser on giving him notice of the dishonor? What must be done before payment can be demanded of the indorser?

6. What is the form of complaint on a lost note against maker and indorser?

IV. That due notice of the dishonor was served upon the defendant, John B. Astor, accompanied by the bond of indemnity required by statute.

V. That plaintiff is now the lawful owner and holder of said note, and that there is due to him thereon, from the said defendant, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

7. The indorser of commercial paper guaranties that he has a good title, and that all the antecedent signatures are genuine. The indorser guaranties that the maker will pay the same at maturity, on due presentment: that if, when duly presented, it is not paid by the maker, he, the indorser, will, upon due notice given him of the dishonor, pay the same to the indorsee or holder. The obligation of the indorser to the indorsee and subsequent holder is conditional. The holder undertakes to present the note to the maker at maturity, and demand immediate payment; and if the same is not paid, he undertakes to give notice of the dishonor, without delay, to all persons whose names are upon the note or bill, between himself and the maker, whom he wishes to bind absolutely to the payment thereof, and who would have an action against the primary debtor on paying the same. If the holder neglects to make the demand at maturity, and to give immediate notice to the indorsers, the indorsers will be discharged, unless there is some reasonable excuse for delaying to make the demand and give the notice.

8. The drawer of a bill of exchange guaranties that the drawee will accept the bill in writing, on presentment, and that he will pay the same at maturity, on presentment: that if the drawee does not accept and pay the

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7. What does the indorser guaranty in reference to his title? In reference to antecedent signatures? What does he guaranty as to the maker? If the maker does not pay the same on presentment at maturity? Is the obligation of the indorser conditional or absolute? What does the holder undertake to do? To whom must he give notice of dishonor? If he neglects to make the demand at maturity, and to give immediate notice to the indorsers, what is the effect?

8. What does the drawer of a bill of exchange guaranty that the



bill, he, upon notice of dishonor, will pay the same, together with such damages as the law allows as an indemnity. A bill is said to be honored, when it is accepted. When it becomes payable, it has arrived at maturity. When acceptance or payment is refused, it is dishonored.

9. An indorsement is presumed to have been made before the maturity of the note or bill. The indorsement is also presumed to have been made for a valuable consideration. The allegation of indorsement and delivery by the payee is necessary, when the note is made payable to his order. The plaintiff must show that he became the owner of the note before the action was commenced. The production of the note on the trial, indorsed to him or indorsed in blank, raises the presumption that he became the owner thereof for value, and before maturity. Evidence on the part of the defendant that the note was lost or stolen rebuts the presumption that it was received by the plaintiff before maturity, and for value. The plaintiff must then produce direct evidence that he took the note in good faith before maturity, and for value. If the holder is not one of the original parties, it is necessary to aver distinctly that he is now the owner and holder thereof.

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drawee will do? If the drawee does not accept and pay the bill? When is a bill said to be honored? When does it become payable? When is it dishonored?

9. When is an indorsement presumed to have been made? What is the presumption as to consideration? When is the allegation of indorsement and delivery by the payee necessary? At what time must the plaintiff show that he became the owner and holder of the note? What raises the presumption that he became the owner thereof for value, and before maturity? What is the effect of evidence on the part of the defendant that the note was lost or stolen? What evidence must the plaintiff then produce? If the holder is not one of the original parties, what is necessary to aver?

## CHAPTER XCVI.

## ACTIONS AGAINST INDORSERS.

1. WHEN an action is commenced against the maker and indorsers, the facts which constitute the cause of action are set forth as follows:

(Title.)

(Commencement.)

I. That the defendant, William Blake, at the city of New York, on the 8th day of June, 1865, made his promissory note, in writing, and delivered the same to defendant, John B. Astor, of which the following is a copy:

JOHN B. ASTOR.  
JOHN FOSTER.

\$500.

New York, June 8, 1865.

"One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

"WILLIAM BLAKE."

II. That the defendant, John B. Astor, indorsed the same for value, and delivered the same so indorsed.

III. That thereafter the defendant, John Foster, indorsed the same for value, and delivered the same so indorsed; and thereafter, and before maturity, it lawfully came to the possession of plaintiff for value.

IV. Plaintiff further states, upon information and belief, that at maturity said note was duly presented for payment, but was not paid, of which the defendants, John B. Astor and John Foster, had due notice.

V. That plaintiff is now the lawful owner and holder of said note, and that there is due to him thereon, from the defendants, the sum of five hundred dollars, and interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

2. When an action is brought by the holder of a bill of exchange against the drawer, acceptor, and indorser,

1. When the action is commenced against the maker and indorsers, how are the facts which constitute the cause of action set forth?

2. When an action is commenced against the drawee, acceptor, and in-

the facts constituting the cause of action are stated in the complaint as follows:

(Title.)

(Commencement.)

I. That at the city of New York, on the 8th day of June, 1865, defendant, William Blake, made his certain bill of exchange, in writing, and delivered the same to defendant, John B. Astor, of which the following is a copy:

"\$500.

NEW YORK, June 8, 1865.

"One month after date, pay to the order of John B. Astor five hundred dollars, value received, and put the same to my account.

"WILLIAM BLAKE.

"To JOHN FOSTER,  
New York city."

Accepted,  
John Foster,  
Indorsed,  
John B. Astor.

II. That the defendant, John Foster, then and there accepted the said bill according to the terms thereof, and delivered the same to John B. Astor.

III. That thereafter the defendant, John B. Astor, indorsed the same for value, and delivered the same so indorsed; and thereafter, ~~and~~ before maturity thereof, it lawfully came to the possession of the plaintiff for value.

IV. Plaintiff further states, on information and belief, that at maturity said bill of exchange was duly presented for payment, but was not paid, of which the defendants, William Blake and John B. Astor, had due notice.

V. That plaintiff is now the lawful owner and holder of said bill of exchange, and that there is due to him thereon from the defendants the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

3. If the note or bill is made payable at a particular place, it must be presented there for payment, in order to bind the indorsers. It is not necessary, however, to allege in the complaint that the note or bill was there presented for payment. It will be sufficient to allege that it was

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dorser of a bill of exchange, how are the facts which constitute the cause of action set forth in the complaint?

3. If a note or bill is made payable at a particular place, where must it be presented for payment? Is it necessary to allege in the complaint that it was presented at that place? What allegation will be sufficient?

duly presented for payment. Formerly, evidence of facts excusing non-presentment and want of notice was admissible under an allegation of due demand and notice. Under the Code, the plaintiff must plead the facts constituting his excuse, if he wishes to prove such excuse on the trial. Under an allegation of performance, evidence of facts excusing non-performance is not admissible. An allegation in a complaint against an indorser, that the note was duly presented to the maker and payment demanded, is proper when it was presented at the last place of residence and business from which the maker had recently removed, and after diligent inquiry could not be found, so that it could be presented to him personally.

4. When non-presentment is excused, because the maker of the note or acceptor of the bill could not be found, the facts constituting the cause of action are set forth in the complaint in the following form :

(Title.)

(Commencement.)

I. That the defendant, William Blake, at the city of New York, on the 8th day of June, 1865, made his promissory note in writing, and delivered the same to John B. Astor, of which the following is a copy :

JOHN B. ASTOR.  
JOHN FOSTER.

"\$500.

NEW YORK, June 8, 1865.

"One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

"WILLIAM BLAKE."

II. That the defendant, John B. Astor, indorsed the same for value, and delivered the same so indorsed.

III. That the defendant, John Foster, indorsed the same for value, and delivered the same so indorsed ; and thereafter, and before its maturity, it lawfully came into the hands of plaintiff for value.

IV. Plaintiff further states, on information and belief, that at the ma-

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What was the former rule as to the admissibility of the evidence of facts excusing non-presentment and want of notice? What is the rule under the Code? What is not admissible under an allegation of performance? If presentment were made at his last place of business or residence from which the maker had recently removed?

4. When non-presentment is excused, because the maker of the note could not be found, how are the facts constituting the cause of action stated in the complaint?

turity of said note due search and inquiry was made for said William Blake at the city of New York, in order that the same might be duly presented to him for payment, but he could not be found, and the same was not paid; of all of which the defendants, John B. Astor and John Foster, had due notice.

V. That plaintiff is now the lawful owner and holder of said note, and that there is due to him thereon, from the defendants, the sum of five hundred dollars, with interest from the 11th day of July, 1865.

(Demand.)

(Verification.)

5. The law deems it a sufficient excuse for delaying to make presentment and demand, if it be morally or physically impossible to make demand on that day. The presentment and demand must, however, be made at the earliest opportunity. The following have been decided to be legal excuses for such delay: 1. The sudden illness or death of the holder or his agent; 2. The absconding of the maker or acceptor, and his place of residence being deserted, unknown, or unfound after diligent search; 3. The general prevalence of a malignant disease, which stops all business in the place of payment; 4. The impossibility of reaching the place where the maker resides, on account of storms, freshets, or overwhelming accidents; 5. The occurrence of war, or the interdiction of commercial intercourse with the country where the maker or acceptor resides; 6. The day of maturity occurring on a public holiday, or religious festival celebrated in accordance with the known usages of the country.

6. Payment must be demanded at the time the note or bill becomes due and payable, and not before or after. Unless payment be so demanded, or the demand be excused, the right of the holder against the indorsers is lost. The holder is not at liberty to extend the time of payment a single day; if he does, he discharges the in-

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5. When does the law deem it a sufficient excuse for delaying to make presentment and demand? How soon, in such case, must presentment and demand be made? What have been decided to be legal excuses for such delay?

6. When must presentment and demand be made? If payment is not then demanded, or the delay excused, what will be the effect? Can

dorsers. The indorser or drawer agrees to pay the note or bill on demand, upon the condition that it be duly presented to the maker or drawee upon maturity, at the place designated, and payment thereof demanded, and if refused, due notice of the dishonor be given to such indorser or drawer. The death or insolvency of the maker or acceptor will be no excuse for the omission to demand payment at the time the note or bill becomes due. The indorser may waive presentment, demand, and notice. Waiver of proof necessary to establish a particular fact, is equivalent to an agreement to admit that fact on the trial. A waiver may be made in writing, at the time of the indorsement. Evidence of such a waiver is admissible under the allegation of due demand and notice. This waiver is generally made in the following form :

Presentment, demand, and notice  
waived.  
JOHN B. ASTOR.

7. Although a promise which is presumptive evidence of waiver need not be pleaded specially, yet a promise

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the holder extend the time of payment? If he does, what is the effect? What does the indorser or drawer agree to do? If the maker or acceptor have died, or have become insolvent? What may the indorser waive? To what is waiver of proof necessary to establish a fact equivalent? When may a waiver be made in writing? Under what allegation is evidence of such a waiver admissible? What is the form of such waiver?

7. If the promise be relied on to establish the waiver of an acknow-

which is relied on to establish a waiver of an acknowledged omission, after the omission to give notice has occurred, must be pleaded specially. The waiver before the time to give notice is equivalent to due notice. The waiver of an omission which has actually occurred is not equivalent to due notice, and must be pleaded specially. When the indorser has waived an actual omission of the holder to give notice, the facts constituting the cause of action are set forth in the complaint as follows :

(Title.)

(Commencement.)

I. That at the city of New York, on the 8th day of June, 1865, the defendant, William Blake, made his promissory note, in writing, and delivered the same to defendant, John B. Astor, of which the following is a copy :

Indorsed,  
JOHN B. ASTOR.  
JOHN FOSTER.

" \$500.

NEW YORK, June 8, 1865.

" One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

" WILLIAM BLAKE."

II. That defendant, John B. Astor, indorsed the same for value, and delivered the same so indorsed.

III. That thereafter the defendant, John Foster, indorsed the same for value, and delivered the same so indorsed ; and thereafter, and before its maturity, it lawfully came to the possession of plaintiff for value.

IV. That at maturity said note was duly presented for payment, but was not paid.

V. That the defendants, John B. Astor and John Foster, thereafter severally waived the laches of plaintiff in not giving them due notice thereof, and severally promised to pay said note.

VI. That plaintiff is now the lawful owner and holder of said note, and that there is due to him thereon, from the defendants, the sum of five hundred dollars, with interest thereon from the 11th day of July, 1865.

(Demand.)

(Verification.)

In order to make a waiver obligatory upon the party

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ledged omission? What waiver is equivalent to due notice? What waiver is not equivalent to due notice? Which must be pleaded specially? When the indorser has waived an actual omission of the holder to give notice, how are the facts constituting the cause o

making it, the waiver must be made with a full knowledge that there has been a want of due notice of the dishonor. The waiver presupposes that notice has not been given, and that the holder has no excuse for the omission. A part payment of a note or bill, not explained, will be held to be a sufficient waiver of due notice. Vague and uncertain language will not be deemed sufficient.

8. An excuse for omission of due notice is, in its nature, a justification for such omission, without any consent on the part of the indorsers. The following have been decided to be sufficient excuses for the omission of due and regular notice of dishonor: 1. When the notice is prevented by inevitable accident or overwhelming calamity; 2. When prevented by the prevalence of a malignant disease, which interrupts the operations of trade and business; 3. Occurrence of war, blockade, invasion, or occupation of the place, where the notice is to be served, by an enemy; 4. Public prohibition of commerce between the countries; 5. The absconding of the party entitled to notice, or having no fixed place of residence, or being unknown or unfound, after reasonable inquiry; 6. That the note or bill was given for the accommodation of the indorser only, and that he must ultimately pay the same; 7. That there was an agreement on the part of the indorser to pay the note or bill at maturity, at all events; 8. That the indorser has received security from the maker, in part or in full, for his liability thereon;—if the security be in full, the indorser is bound without notice; if in part only, he is bound to the extent of his security; 9. Receiving money from the maker to take up the note; 10. The agreement of the indorser to

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action alleged in the complaint? In order to make the waiver obligatory on the person making it, with what knowledge must it be made? What does the waiver of an omission presuppose? What effect does the part payment of a note or bill have? If the waiver be made in vague and uncertain language?

8. What is the nature of an excuse for omission of due notice? What have been decided to be sufficient excuses for the omission of due and regular notice of dishonor?



dispense with notice; 11. Direction from the indorser to the maker not to pay the note.

9. When a note is made payable to payee, or order, it can only be made negotiable by the order of the payee. If the payee be a partnership, and the partnership is dissolved during the lifetime of the partners, neither partner can afterwards indorse in the name of the firm. There must be a joint indorsement of all the partners in case of dissolution: the implied authority of one partner to act for all is gone. In case of the death of one partner, the survivor may indorse. A note may be transferred by the assignment of the payee; but that will not render it negotiable, as between the maker and payee. It will be subject to all the set-offs and equitable defences between the original parties, into whose hands soever it may pass. If the note is made payable to payee, or bearer, the payee may transfer his right therein by mere delivery. Every holder, however, in passing a note, either with or without his indorsement, assumes certain obligations and responsibilities. He warrants, by implication—1. That he is the lawful holder; 2. That he has a valid title; 3. That he has a right to transfer it by delivery; 4. That it is genuine, and not forged; 5. That he has no knowledge of any fact which would render the instrument worthless. Any concealment of these facts would be a manifest fraud.

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9. When a note is made payable to payee, or order, how only can it be made negotiable? If the payee be a partnership, and the partnership be dissolved during the life of the partners? How must it be indorsed? What ceases with the dissolution? In case of the death of one partner? If a note payable to payee, or order, be assigned by the payee, what is the effect? To what will it be subject? If the note is made payable to payee, or bearer, how is it transferred? What obligations does every holder assume in transferring a note? What is a concealment of any of these facts?

## CHAPTER XCVII.

## THE TIME TO DEMAND PAYMENT.

1. As to the time when a note payable on demand shall be presented for payment, and notice of dishonor given to the indorser, in order to bind him, great uncertainty had existed until the question came up in the New York Court of Appeals, in 1861, in the case of Merritt against Todd, reported in the New York Reports, vol. xxiii., p. 28. The opinion of the court in this case was delivered by Chief-Justice Comstock, in which opinion his associate justices, Selden, Denio, Davis, Mason, and James concurred. It seems that one rule had formerly been applied to this class of cases—viz., that “payment of such notes should be demanded within a reasonable time.” The court, in this case, endeavored to discover an intelligible principle by which this class of cases could be decided.

2. They discovered two principles, directly antagonistic to each other, one of which would furnish a clear and precise rule for the determination of this question. Chief-Justice Comstock, in his opinion, says: “We have these two principles, directly antagonistic to each other, by one or the other of which questions like the one before us ought to be determined. We say this, because there is no intermediate ground to stand upon. A note payable on demand is either a *continuing security*, upon which a de-

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1. As to the time when a note payable on demand shall be presented for payment, and notice of dishonor given to the indorser, in order to bind him, what formerly existed? When did this question come up in the New York Court of Appeals? By whom was the opinion of the court given? What associate justices concurred in his opinion? What had been the rule as to the time of making demand? What did the court discover in this case?

2. Are these two principles in harmony with each other? Is there any middle ground to stand upon? If the note payable on demand be a

mand may be made, in season, at any time (within the Statute of Limitations); or it is *not a continuing security*, and then a demand must be made immediately—that is to say, on the next day after the holder receives the note, or within such additional time only as the circumstances of distance, etc., may require. If we depart from these rules, and attempt to find one lying somewhere between them, we are lost in uncertainty, and the community will never know how to transact business of this nature in safety. Between these rules, we are to select the one which will best harmonize with the language of the contract and the intention of the parties. A promissory note payable on demand, with interest, and indorsed, is regarded as a continuing security. In this case, demand may be made at any time (within the Statute of Limitations), and the holder is not chargeable with neglect. If the note be payable without interest, it will be a fair exposition of the contract to hold that no time of credit is contemplated by the indorser, and the demand must be made as soon as the next day after the holder receives the same.”

3. If a note or bill be drawn on the 1st day of January, payable in ten days, without grace, it is due on the 11th day of January. The day of the date is excluded from the computation. A month, in all cases of commercial paper, and in all commercial contracts, is deemed a calendar month. If a note or bill be drawn on the 31st of January, payable in one month, without grace, it will be due on the last day of February. The general rule is,

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continuing security, when may the demand be made? If it is not a continuing security, how soon must the demand be made? If we depart from these rules, and attempt to find one lying between them, what is the effect? Between these two rules, which are we to select? If a promissory note be made payable on demand, with interest, and is indorsed, how is it to be regarded? When may demand be made in this case? If such note be made without interest? How soon must payment be demanded?

3. If a note be drawn on the 1st day of January, payable in ten days, when does it become due? What is excluded from the computation? What is a month in all commercial contracts? If a note or bill be

that "if the date be the last day of the month, the note becomes due on the same day of the month, if there be any such day. If there be no such day, then on the latest day in the month." Days of grace are generally added by the custom of merchants, and they must be included to ascertain the actual time when the note or bill becomes due.

4. The number of days of grace is governed by the law of the place where the note or bill is made payable. Three days of grace are allowed in most of the States. Days of grace are all to be counted consecutively after the day when the note would otherwise become due, without any allowance for Sundays or holidays between the first and last days of grace. If the last day of grace be Sunday, the note becomes due on Saturday. The same rule applies as to other holidays. *The latest business day* occurring within the days of grace is the day on which the note is due and payable, and the days of grace then expire.

5. Days of grace are allowed on bills and notes payable *at sight* in most of the States, and also on bills and notes payable by instalments; and days of grace are allowed on each instalment. Notes and bills payable on demand, however, are payable without days of grace. If no time of payment is expressed on the face of the note, it is payable on demand without days of grace. In the year 1857, a law was passed in the State of New York in relation to commercial paper, by which it was provided that all bills of exchange drawn payable at sight, at any place in that

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drawn on the 31st of January, payable in one month, when is it due? What is the general rule, if the date be the last day of the month? If there is no such day? What are added by the custom of merchants?

4. How is the number of days of grace governed? How many days are generally allowed? How are they to be counted? If the last day of grace be Sunday? If it be some other holiday? What is the day of grace on which the note becomes due and payable?

5. What is the rule as to bills and notes payable at sight? If payable by instalments? If payable on demand? If no time of payment be expressed on the face of the note or bill? What law was passed in New York in 1857? What was provided in reference to bills of ex-

State, should be payable on presentation without days of grace. It was also provided that all checks and bills of exchange, appearing on their face to have been drawn on any bank or individual banker, which were on their face payable on any specific day, or in any number of days after the date or sight thereof, should be due and payable on the day mentioned, without days of grace, and that it should not be necessary to protest the same for non-acceptance.

6. The note or bill must be presented, and payment demanded, on the day of maturity. This must be done within reasonable hours of the day. If payable at a bank, it must be presented during banking hours. If no place of payment be designated, demand may be made at the place of business or dwelling-house of the maker or acceptor. If the holder make presentation at an unseasonable hour, the presentment will be deemed a mere nullity, and without any legal effect, and the indorsers will be discharged from all liability thereon. When the note or bill is made payable at a particular place, it is not necessary for the holder to demand payment at that place, in order to maintain an action against the primary debtor on the note or bill. In an action against the maker or acceptor only, it is not necessary to allege in the complaint, nor to prove on the trial, any such presentment or demand. The omission is a matter of defence on the part of the maker or acceptor. If they had funds at the appointed

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change payable at sight at any place in that State? What was provided in reference to checks and bills of exchange, appearing on their face to have been drawn on any bank or individual banker, payable on any specific day, or in any number of days after the date or sight thereof? For what shall it not be necessary to protest the same?

6. When must the note or bill be presented for payment? In what part of the day? If payable at a bank? If no place of payment be designated? If the holder make presentment at an unseasonable hour? How will it affect the indorsers? If made payable at a particular place? In an action against the maker or acceptor, what is not necessary to allege in the complaint? If such omission exists, who may take advantage of it? If the maker or acceptor had funds at the place of payment at the time, and the note or bill was not presented? From what will

place at the time, and the note or bill was not presented, they will still be liable to pay the amount of the note or bill; but they will be exonerated from the cost of the action. If the funds deposited by the maker or acceptor have been lost through the neglect of the holder, they will be exonerated from their liability to the extent of such loss.

7. If a note or bill be made payable at the People's Bank or at the Bank of America, the holder may present it at either bank; but he is not bound to present it at both. If made payable at the city of New York, and no particular place of presentment be specified, and the maker or acceptor does not reside in the city of New York, and has no place of business there, the holder is bound to make reasonable inquiry there; and if no one be found to pay the note or bill, it may be treated as dishonored, and the drawer and indorsers will be held. If the parties make a parol agreement that it shall be presented at a particular place for payment, presentment at that place will be sufficient to bind all the parties to such verbal agreement. Where a note or bill is payable generally, presentment may be made personally to the maker or acceptor, although he may not be at his residence or place of business. Presentment at the dwelling-house or place of business during reasonable hours, whether the maker or acceptor be there or not, is a sufficient presentment. The presentment may be made at either place; but need not be made at both. If the maker or acceptor change his residence or place of business after making the note or accepting the bill, presentment must be made

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they be exonerated? If the funds deposited have been lost by the neglect of the holder to make the demand?

7. If the note or bill be made payable at the People's Bank or the Bank of America? If made payable in the city of New York, and no particular place of payment be specified, and the maker or acceptor does not reside in the city? If the parties make a parol agreement that it shall be presented at a particular place? Where the note or bill is payable generally? If presented at the place of business or domicile during reasonable hours, is it necessary that the maker or acceptor be within?

at his new place, if it be known, or if it can be found by reasonable diligence, if it be within the State. Presentment at the old domicile or place of business is not sufficient.

8. When the maker of a promissory note in the State of New York removes therefrom, and continues to reside without the State until its maturity, the indorser may be charged without a demand upon the maker, or presentment at his last place of residence within that State. If the maker or acceptor be absent from the country, and has left his dwelling-house or place of business open, the note or bill must there be presented. If he has left a known agent, presentment should be made to the agent. When payable by a partnership, presentment to any one partner will be sufficient. If joint makers or acceptors be not partners, presentment must be made to each. If the maker or acceptor is deceased, it must be presented to his executor or administrator, if one has been appointed. If it cannot be ascertained, upon due inquiry, that any such appointment has been made, it must be presented at the domicile of the deceased. If the makers or acceptors were partners, and one die, presentment must be made to the survivor. If payable at a bank, or at any other specified place, it will be sufficient to deposit it at that place for collection. It must be actually at the designated place on the day of maturity, ready to be delivered up on payment.

9. Presentment may be made by the holder or his agent. If the holders are partners, it may be made by

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If the maker or acceptor change his place of business or residence after making the note or accepting the bill? What will not be sufficient?

8. If the maker of a promissory note remove from the State after making the same, and remain without the State? If the maker or acceptor be absent from the country, and has left his place of business or domicile open? If he has left a known agent? When payable by a partnership? If joint makers or acceptors be not partners? If the maker or acceptor is deceased? If none have been appointed? If the makers or acceptors were partners, and one dies? If payable at a bank or any other specified place?

9. By whom may presentment be made? If the holders are partners?

either partner. If a bank is the holder, it may be made by the cashier or his authorized agent. Presentment should not be made by a holder under guardianship. If the holder has become insolvent, and a receiver has been appointed, presentment should be made by the receiver or his agent. After the death of the holder, presentment must be made by the executor or administrator, when appointed. If the holders were partners, and one die, presentment must be made by the survivor or his agent.

10. Presentment must be made to the maker or acceptor, either personally, or at his dwelling-house or place of business. If payable at a particular place, it must there be presented. Presentment may be made to the duly authorized agent of the maker or acceptor. When one joint maker or acceptor dies, presentment must be made to the survivor. If the note or bill be joint and several, it may be presented to either.

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## CHAPTER XCVIII.

### PROTEST, WHEN NECESSARY.

1. A PROTEST is a solemn declaration on behalf of the holder against the drawer and indorsers, that they shall be held responsible for any loss to be sustained by non-acceptance or non-payment of the note or bill. A copy of the note or bill should always be annexed to the protest, with the indorsements thereon; and if any reason is given for the non-payment or non-acceptance, it should

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If a bank is the holder? If the holder be under guardianship? If the holder has become insolvent, and a receiver has been appointed? After the death of the holder? If the holders were partners, and one die?

10. To whom must presentment be made? If payable at a particular place? If the maker have a duly authorized agent? When one joint maker or acceptor dies? If the note or bill be joint and several?

1. What is a protest? What is usually attached to the protest? If any reason is given for the non-acceptance or non-payment, where should



be stated in the protest. A protest is absolutely necessary in case of foreign bills. No protest of promissory notes or inland bills of exchange is required by law. When a protest is required by law, it must be made by a notary public, if one can be procured. If none can be procured, it may be made by a respectable inhabitant of the place. Upon the dishonor of foreign bills, the holder must have the bill duly protested, and notice thereof given to the antecedent collateral parties to whom he intends to look for reimbursement or indemnity.

2. It is a general custom among merchants to have promissory notes and inland bills of exchange presented for payment by a notary public, and to have the same protested in case of non-acceptance or non-payment. Although it is not absolutely necessary that the presentment, demand, and notice be made by a notary public, yet it is undoubtedly preferable to employ a notary as an agent in such cases. The notary, being a public officer, keeps a record of all bills or notes protested by him, and the evidence of presentation, demand, and notice is perpetuated by means of his official record.

3. It is declared by statute in the State of New York that notaries public shall have authority to demand acceptance and payment of foreign bills of exchange, and authority to protest the same for non-acceptance and non-payment. They may also exercise all other powers and duties which by the law of nations or commercial usage, or by the laws of any other State or government, may be performed by notaries public. They are also authorized to demand acceptance and payment of inland bills of ex-

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it be stated? When is a protest absolutely necessary? When is it not required by law? By whom must a protest be made? If a notary public cannot be procured? What is necessary in case of the dishonor of a foreign bill?

2. What is the general custom among merchants as to presentation of promissory notes and inland bills? Is it absolutely necessary to have them protested by a notary? Why is it preferable? What record does the notary keep?

3. What authority is given by statute, in the State of New York, to notaries public? What other powers may they exercise? What is

change and promissory notes, and may protest the same for non-acceptance and non-payment.

4. The protest of foreign bills of exchange is evidence of the facts contained therein, but the protest made by notaries public in the State of New York of inland bills and promissory notes is not evidence of the facts contained therein, except in the following cases: 1. In case of the death or insanity of the notary public, or of his absence, so that his personal attendance or testimony cannot be procured, the original protest of such notary under his official seal, his signature and seal being duly proved, is presumptive evidence of the fact of any demand of acceptance or of payment therein stated; 2. In all cases at law, the certificate of a notary, under his hand and seal of office, of the presentment by him of any promissory note or bill of exchange for acceptance or payment, and of any protest, and of service of notice thereof upon any of the parties to the bill or note, and specifying the mode of giving such notice, and the reputed place of residence of the parties to whom the notice was given, and the post-office nearest thereto, is presumptive evidence of the facts contained in such certificate. But this provision does not apply to any case in which the defendant shall in his answer deny on oath the fact of having received notice of non-acceptance or non-payment of such note or bill; 3. Any note or memorandum made by a notary public in his own handwriting, and signed by him at the foot of the protest, or in the regular register of official acts kept by him in the cases above specified, shall be presumptive evidence of the fact of any notice of non-acceptance or non-payment having been sent or delivered at the time or in the manner stated in such note or memorandum.

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their authority in reference to promissory notes and inland bills of exchange?

4. Of what is the protest of foreign bills of exchange evidence? When is the protest of inland bills and promissory notes evidence of the facts contained therein? In cases at law, what is the rule? If the defendant denies on oath, in his answer, the fact of receiving notice?

UNITED STATES OF AMERICA, } ss.  
State of New York. }

Wherefore, I, the said notary public, at the request aforesaid, did protest, and by these presents do publicly protest, as well against the maker and indorsers of said note as against all others whom it may concern, for exchange, re-exchange, and all costs, damages, interest already incurred, and to be hereafter incurred, for want of payment of the same.

In witness whereof, I have hereunto subscribed my name, and affixed my notarial seal.

**BENJ. K. TRUE,**  
Notary Public,  
43 Wall-street, N. Y. city.

Indorsed.  
JOHN B. ASTOR.

\$500. NEW YORK, June 8, 1865.  
One month after date, I promise to pay John B. Astor, or order  
five hundred dollars, value received.

WILLIAM BLAKE.

NEW YORK, July 11, 1865.

5. What is the form of a protest? Does it contain a description of the time and manner of serving notice? A copy of what is attached?

6. What is the form of the notice? What is generally returned to

by you, which became due this day, payment of which has been duly demanded and refused, was this evening protested for non-payment, and the holder looks to you for payment thereof.

Your obt. servt.,

BENJ. K. TRUE,

Notary Public,

43 Wall-street, N. Y. city.

To JOHN B. ASTOR.

The original protest is generally retained by the notary public, bound in a book; and in case of inland bills and promissory notes, an abbreviated protest, in the following form, is attached to the note and returned to the party for whom it is protested:

STATE OF NEW YORK, }  
City and County of New York. }

Be it known, that the promissory note hereunto annexed was this day protested for non-payment.

New York, July 11, 1865.

BENJ. K. TRUE,

Notary Public,

43 Wall-street, N. Y. city.

Witness—

JOHN DOE,

RICHARD ROE.

This memorandum is generally attached to the note or bill, instead of the full protest. If an action is commenced on the note or bill, and it is necessary to prove the protest, application is made to the notary public, whose name is upon the memorandum, and he, without additional charge, furnishes the applicant with a copy of the protest under his hand and notarial seal.

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the owner with the note? If an action is commenced on the note or bill?

## CHAPTER XCXIX.

## NOTICE OF DISHONOR.

1. NOTICE must be given by the holder or his agent, duly authorized, or by some person who is a party to the note or bill, and liable to pay the same. If the notice be given by a mere stranger, not authorized, it is void. Knowledge of the dishonor is not notice to the indorser that the holder intends to look to him for the payment of the same. A notice from a party to the note or bill will enure to the benefit of every other party who stands between the party giving the notice and the primary debtor. A notice from the holder to the first indorser will operate as a notice from each of the intermediate indorsers, and will render the first indorser liable to each.

2. If the holder give no notice, except to his immediate indorser on the note or bill, and that indorser give notice, without delay, to the prior parties, the holder may avail himself of such notice, and sue all prior parties. The notice comes from one who is liable to pay the note, and is entitled to reimbursement from such prior parties. The first indorser would be ultimately bound to pay the note, and he may be made directly liable to pay it to a remote indorsee, since he would be circuitously bound to pay it.

3. If two persons, not partners, be holders, notice by one will be presumed to be for both. If the holder be an

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1. By whom must the notice of dishonor be given? If the notice be given by a mere stranger? Is knowledge of the dishonor notice? To whose benefit will notice by one party to the bill enure? What will be the effect of a notice by the holder to the first indorser?

2. If the holder give notice to his immediate indorser only, and that indorser, without delay, give notice to prior indorsers? From whom does the notice come? To whom would the first indorser be bound to pay the note?

3. If two persons, not partners, be holders? If the holder be an in-

infant, notice may be given by the infant himself, or by his guardian. Notice must be given to each of joint indorsers, who are not partners. When the party entitled to notice and the holder reside in the same town or city, notice was required to be served either personally or by leaving the same at his domicile or place of business. This is now the law in many of the States of the Union. In New York, by an act in relation to commercial paper, passed April 17, 1857, it is provided, "that when the indorser or drawer resides in the same city or town where the note, check, or bill of exchange is payable, or legally presented for payment or acceptance, all notices of non-payment or non-acceptance may be served by depositing them, with the postage thereon prepaid, in the post-office of the city or town where the same was made payable, or legally presented for payment or acceptance, directed to the indorser or drawer at such city or town."

4. If the indorser has his domicile in one town or city, and his place of business in another, notice may be sent to him at either place. If the parties entitled to notice are partners, notice may be sent to the place of residence or place of business of either of the parties. If the indorser or drawer has changed his place of business and domicile, notice should be sent to his new place of business or domicile. The indorser may assign any particular place where the notice may be sent. The notice may be verbal or in writing. When the domicile or place of business is not known, due diligence and inquiry should be

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fant? If the joint indorsers are not partners? When the holder and the indorser resided in the same town or city, what was the former mode of serving notice? Where is this now required? What was the title of the act passed in New York in 1857? What is the provision of that law in reference to the service of notice when the holder, and indorsers, and drawer reside in the same town?

4. If the drawer or indorser have his domicile in one town or city, and his place of business in another? If the parties entitled to notice are partners? If he has changed his domicile or place of business? If the indorser assign a particular place for service? May the notice be verbal? When the domicile or place of business is not known? If he has removed from the State?

made to ascertain it. If he has removed from the State, due diligence should be exercised to ascertain his new residence, and notice should be sent to him at that place.

5. Notice should be served as soon as the next day after the dishonor. It may be served on the same day, but must be served after the dishonor. If the mail does not run every day, it will be sufficient to deposit the notice in the post-office in season for the next regular mail. The holder must give notice to all the indorsers on the same day, if he intends to bind them to him as indorsers. If there be five indorsers, and the holder give notice to the fifth only, the fifth may, on the next day after receiving notice, give notice to the fourth; and the fourth may, on the next day after receiving notice, give notice to the third; and so on to the first. Each indorser is entitled to one day after receiving notice to give notice to the previous indorser. Notice having been given in this form would bind all the indorsers to the holder.

6. Notice should be directed to the town where the indorser is accustomed to receive his letters. If there is no post-office in that town, it may be directed to him at the post-office in the town nearest his residence. If, on diligent inquiry, the residence of the indorser cannot be found, notice may be sent to the place where the note or bill bears date, or where the indorser resided at the time of making the indorsement, if known. If it be misdirected, from erroneous information, after reasonable inquiry, the misdirection will be excused.

7. Sometimes a note which has been indorsed, in the course of business, comes back into the possession of a

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5. How soon should notice be served? If served on the same day? If the mail does not run every day? To whom must the holder give notice? If there be five indorsers, and the holder give notice to the fifth only? To what time is each indorser entitled? What would be the effect of notice given in this form?

6. Where should the notice be directed? If there is no post-office in that town? If, on diligent inquiry, the residence of the indorser cannot be found? If it be misdirected, from erroneous information?

7. If a note which has been indorsed comes back, in the course of business, into the hands of a prior indorser? If, in the form given, the note

prior indorser. In such case, all indorsers who indorsed after the indorser who has a second time become the holder will be discharged from all liability thereon, unless such prior indorser indorsed the same "without recourse." In the following form there are five indorsers:

JOHN B. ASTOR.  
JOHN FOSTER.  
WILLIAM BLAKE.  
JOHN DOE.  
RICHARD ROE.

If Richard Roe indorse the above note, and deliver it to John Foster, the last three indorsers are discharged from all responsibility. If John Foster qualify his indorsement as in the following form,

JOHN B. ASTOR.  
(Without recourse  
to me, JOHN FOSTER.)  
WILLIAM BLAKE.  
JOHN DOE.  
RICHARD ROE.

Richard Roe may indorse the note, and deliver it to John Foster, and none of the other indorsers would be re-



leased from their responsibility. The indorsers are bound in the order of their indorsements, and no indorser can look to those below him upon the bill or note for payment. Each must look to the primary debtor, and the indorsers between himself and the primary debtor. It was formerly held that the payee could not maintain an action against an indorser on a note or bill.

8. In the case of *Moore against Cross*, reported in vol. xxiii. of *Barbour's Reports*, it was held that the payee may maintain an action against an indorser on a promissory note payable to payee's order. When the note is made by the maker, and indorsed by the indorser, and delivered to the payee for value, on the credit of such indorsement, and the indorser indorsed the same for the purpose of procuring for the maker a credit with the payee, the payee can maintain an action against the indorser. The plaintiff, in such case, must make a special allegation of the facts relative to the transaction, that may operate to charge the indorser in the payee's favor. The payee may indorse the note "without recourse," and sue as a subsequent holder. If a note is drawn payable to payee, or bearer, and is passed without the indorsement of the payee, and is subsequently indorsed, and it again come into the possession of the payee, the payee may maintain an action thereon against the indorsers.

9. The facts constituting the cause of action by payee

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be indorsed by Richard Roe, and delivered to John Foster, what will be the effect? If John Foster's indorsement were qualified, as in the second form, what would be the effect? In what order are the indorsers bound? Can an indorser look for indemnity to the indorsers below him on the note or bill? To whom must each look for indemnity? What was formerly held as to the payee's maintaining an action against an indorser?

8. What was held by the New York Court of Appeals in the case of *Moore against Cross*? When can the payee maintain an action against the indorser? What special allegation must the plaintiff make in such case? How may the payee indorse the note? If the note is drawn payable to payee, or bearer, and is passed without the indorsement of the payee, and is subsequently indorsed, and it again come into the possession of the payee?

9. How are the facts constituting a cause of action by payee against maker and indorsers set forth in the complaint?

against maker and indorser are set forth in the complaint in the following form :

(Title.)

(Commencement.)

I. That the defendant, William Blake, at the city of New York, on the 8th day of June, 1865, made his promissory note, in writing, and delivered the same to plaintiff, of which the following is a copy :

Without recourse.  
JOHN B. ASTOR.  
JOHN FOSTER.

"\$500.

NEW YORK, June 8, 1865.

"One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

"WILLIAM BLAKE."

II. That said defendant, John Foster, indorsed said note at the time William Blake delivered said note to plaintiff; and said note was so indorsed by said John Foster for the purpose of procuring for said William Blake a credit with plaintiff, knowing that it would be so applied; and the consideration for said note was delivered to said defendant, William Blake, on the credit of such indorsement; and that said note was so indorsed and so passed by the defendant, John Foster, to the plaintiff, for a valuable consideration then delivered.

III. Plaintiff further states, on information and belief, that said note was duly presented for payment at maturity, but was not paid, of which John Foster had due notice.

IV. That there is now due to plaintiff thereon, from defendants, the sum of five hundred dollars, with interest thereon from the 11th day of July, 1865.

(Demand.)

(Verification.)

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## CHAPTER C.

### ACCOMMODATION PAPER.

1. A PERSON may make a promissory note for the accommodation of the payee, without receiving any value

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1. When the maker of a promissory note makes the same for the accommodation of the payee, without receiving any value therefor, what does he loan to the payee? When the payee indorses such note for the

therefor. The payee may indorse such note for the accommodation of the indorsee or subsequent holder, without receiving any value therefor. In this case the maker loans his credit to the payee, and the payee loans the borrowed credit of the maker and his own credit to the indorsee. Such indorsee may loan the borrowed credit of the maker, and the payee as indorser and his own credit as indorser, to a subsequent indorsee or holder. The maker is in this case called an *accommodation maker*. The payee is an accommodation indorser. The second indorser is also an accommodation indorser. The drawee of a bill of exchange may accept a bill for the accommodation of the drawer. The payee may indorse the bill for the accommodation of the indorsee. Where the note or bill has passed to a subsequent party for a full and valuable consideration, the maker, acceptor, and indorsers are as completely bound to pay the same, as they would be if they had received the amount named in the note or bill. They have loaned their credit, and are bound to pay the same to the subsequent holder. A promissory note or bill of exchange is only a representation of a certain value deposited in the hands of some person who is the primary debtor, and who is ultimately bound to deliver up the value he has received. A right of action continues with some collateral party to the note or bill, until it has been traced to the party who first received value therefor; and when such party has taken up the note or bill, all right of action thereon ceases.

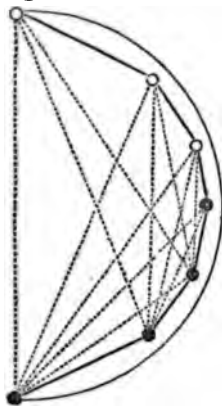
2. Let us now suppose that A. makes an accommodation note, and delivers it to B. as payee. B. indorses the same without consideration, and delivers it to C. C. in-

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accommodation of the indorsee, without receiving any value therefor, what does he loan to the indorsee? What is the maker and indorser in this case called? For what purpose may the acceptor of a bill of exchange accept the same? When an accommodation note or bill has passed into the hands of a holder for full value? What have they loaned? Of what is a promissory note and bill of exchange the representative? Until what does the right of action exist with some of the collateral parties?

2. What case is here supposed? How illustrated? Against whom

dorses the same without consideration, and delivers the same to D. D. indorses the same, and delivers it to E. for its full value. E. indorses the same, and delivers it for value to F. F. indorses the same for value, and delivers it to G. This note may be illustrated by the following figure:



- A. Accommodation maker.
- B. Accommodation payee and indorser.
- C. Accommodation indorser.
- D. Indorser for full value.
- E. Indorser for full value.
- F. Indorser for full value.
- G. The holder for value.

G. can commence an action against either or all the six antecedent parties. If F. pay the note, he may commence an action against either or all the five antecedent parties. If E. pay the note, he may commence an action against either or all the four antecedent parties. If D. pay the note, the right of action ceases to all parties. If A., the maker, pay the note, he has a right of action against B. for the amount he has paid, and B. has a right of action against C., and C. has a right of action against D. The right of action then ceases. It is to be kept prominently in mind that the note or bill is only a representative of value, to be delivered to the person having a right thereto, upon delivering up the note or bill as the voucher for the delivery of such value; and that the

may G. commence an action? Against whom may F. commence an action? Against whom may E. commence an action? If D. pay the note, what will be the effect? If A. pay the note, what right of action has he? If B. pay the note, what right of action has he? If C. pay the note, what right of action has he? What is to be kept prominently in mind?

person who receives the value is ultimately bound to deliver it in exchange for the note or bill; and that the note or bill then becomes void, and all right of action thereon extinguished.

3. In an action by an accommodation maker, who has been compelled to pay the note, against the payee, the facts constituting the cause of action are set forth in the complaint in the following form:

(Title.)

(Commencement.)

I. That at the city of New York, on the 8th day of June, 1865, plaintiff made his promissory note in writing, and delivered the same to defendant, of which the following is a copy:

Indorsed,  
JOHN B. ASTOR.

" \$500.

NEW YORK, June 8, 1865.

" One month after date, I promise to pay John B. Astor, or order, five hundred dollars, value received.

" JOHN FOSTER."

II. That this plaintiff never received any consideration for the said note; but it was an accommodation note, made and delivered to the defendant at his request, and upon his promise that he would pay the same at maturity.

III. That, as plaintiff is informed and believes, the defendant thereafter, and before the maturity of said note, negotiated the same for value.

IV. That defendant failed to pay said note at maturity, and that this plaintiff was thereupon compelled to pay it, and did, at the city of New York, on the 15th day of July, 1865, pay the same, and that no part of the same has been paid to plaintiff; but the defendant is justly indebted to him thereon in the sum of five hundred dollars, with interest thereon from the 11th day of July, 1865.

(Demand.)

(Verification.)

4. When the drawee of a bill of exchange refuses to accept the bill, any person may accept the same for the

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3. In an action by an accommodation maker, who has been compelled to pay the note, against the payee, how are the facts constituting the cause of action set forth in the complaint?

4. When the drawee of a bill of exchange refuses to accept the bill, for whose honor may any other person accept the same? What is this

honor of the drawer or of any indorser, or for the honor of the bill. This is called an acceptance "*supra protest*." The acceptance of a bill *supra protest* after non-acceptance, imports an obligation, on the part of the acceptor for honor, that if the bill is not paid by the drawee upon due presentment at its maturity, and it is then duly protested for non-payment, and due notice of dishonor given to the acceptor for honor, he will pay the same. Presentment to the drawee, protest, and notice of dishonor are indispensable to render the liability of the acceptor for honor absolute. The acceptance for honor enures to the benefit of all parties to the bill, subsequent to the party for whose honor it was accepted. Presentment for payment to the acceptor for honor must be made at maturity; and if a foreign bill, it must be protested, and notice given to the drawer, in order to render him absolutely liable.

5. When an action is commenced by the payee against the drawer and acceptor for honor, the facts constituting the cause of action are set forth in the complaint in the following form :

(Title.)

(Commencement.)

I. That at the city of New York, on the 8th day of June, 1865, the defendant, William Blake, made his bill of exchange in writing, dated on that day, and directed the same to one William Jones, and thereby required said William Jones to pay to the order of plaintiff, one month after the date thereof, five hundred dollars, value received, and delivered the same to plaintiff.

II. That then and there the said bill of exchange was duly presented to the said William Jones for acceptance, but was not accepted, of which the defendant, William Blake, had due notice.

III. That then and there the defendant, John Foster, accepted said bill of exchange for the honor of the said William Blake.

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acceptance called? What is the obligation on the part of the acceptor for honor? What are indispensable to render the liability of the acceptor for honor absolute? To whose benefit does the acceptance for honor enure? Must the bill be presented to the acceptor for honor?

5. When an action is commenced by the payee against the drawer and acceptor for honor, how are the facts constituting the cause of action set forth in the complaint?

IV. That at maturity the said bill of exchange was duly presented for payment to said William Jones, but was not paid, of which the defendants had due notice.

V. That thereafter, the same was duly presented to the said John Foeter for payment, but was not paid, of which the defendant, William Blake, had due notice; and the defendants are now justly indebted to the plaintiff thereon in the sum of five hundred dollars, with interest thereon from the 11th day of July, 1865.

(Demand.)

(Verification.)

6. If the drawer is compelled to pay the bill after it has been accepted by the drawee, he may bring an action thereon against the acceptor. Certain damages are awarded in case of dishonor to the holder of a foreign bill of exchange, which are regulated by the statutes of the several States. On foreign bills of exchange drawn or negotiated within the State of New York, judgment for damages must be demanded, in case of dishonor, according to the following rates: 1. If drawn on any person in either of the New England States, or New Jersey, Pennsylvania, Ohio, Delaware, Maryland, Virginia, or the District of Columbia, *three per cent.*; 2. If drawn on a person in North Carolina, South Carolina, Virginia, Georgia, Tennessee, *five per cent.*; 3. If drawn on a person in any other part of the United States, or any place adjacent north of the equator, or in any part of Europe, *ten per cent.* Such damages are in lieu of all costs, interest before notice, protest, and other charges. After notice of protest, interest is allowed on the amount of principal and damages.

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6. If the drawer is compelled to pay the bill after it has been accepted by the drawee? What are awarded to the holder in case of the dishonor of a foreign bill? How regulated? When is *three per cent.* allowed in the State of New York as damages? When is *five per cent.* allowed? When is *ten per cent.* allowed? Such damages are in lieu of what? On what is interest allowed after notice of protest?



## CHAPTER CI.

## ACTIONS UPON CHECKS.

1. BANK checks are payable on demand, without days of grace. They may be indorsed in the same manner as promissory notes or bills of exchange. The drawer undertakes that the bank shall pay the check on presentment, which must be made as soon as the next day after it is given (unless further delay is excused), in order to bind the drawer absolutely. If after the next day the bank fails, and the drawer loses his funds there deposited for the payment of the check, it will be the loss of the holder of the check, and not the loss of the drawer.

2. The drawer is not discharged by any delay in the presentment, unless he has been injured by such delay. In order to bind the indorser of a check to the payment thereof, in case of dishonor, it must be duly presented as soon as the next day, unless further delay be excused. If dishonored, immediate notice must be given to the indorsers, or they will be discharged. In an action against the drawer of a check, the holder must show that it has been duly presented for payment and dishonored, and notice of the dishonor given to the drawer, or that there is a sufficient excuse for the omission. The holder of a check is excused from giving notice to the drawer, when the drawer has no funds in the bank. If the bank is restrained by an order of the court from paying out

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1. How are checks payable? How indorsed? What does the drawer undertake? How soon must presentment be made? If after the next day the bank fails?

2. When only is the drawer discharged by the delay of the holder? What must be done to bind the indorsers? If dishonored, what must be done? In an action against the drawer of a check, what must the holder show? When is the holder of a check excused from giving notice to the drawer? If the bank is restrained by order of the court from paying out



funds or transaction of business, omission of presentment is excused as to the drawer, who is still holden. Want of funds, or restraint by the order of the court, will be no excuse for non-presentment, so far as the indorser is concerned, and such omission will release the indorsers. If the check has been certified, the bank is holden thereon until the expiration of the Statute of Limitations.

3. When no time of payment is mentioned in the check, it is payable on demand, and no time of payment need be stated in the complaint. All checks in the State of New York are payable without days of grace, and it is not necessary to protest the same for non-acceptance. If the drawer of a check has not been injured by delay, presentment at any time before an action is commenced will be sufficient. An action does not lie upon a check against the drawer until after presentment, demand, and notice of dishonor, unless want of demand and notice is excused. It is always to be presumed, until the contrary appear, that the drawer has funds in the drawee's hands, and that the drawer will be damaged by an omission to present the bill or check to the drawee. If a check be drawn on a bank, and it is presented and not paid, the payee may commence an action thereon against the drawer.

4. When the holder of a check commences an action against the drawer and indorser, he must allege in his complaint presentment, demand, and notice of dishonor. Want of notice is excused, if the drawee have no funds of the drawer in his hands. The want of funds in the hands of the drawee, if relied upon as an excuse for want of no-

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funds? Will want of funds or restraint by order of the court excuse the want of presentment, as far as the indorser is concerned? If a check has been certified?

3. If no time of payment is mentioned in the check? How are all checks payable in the State of New York? If the drawer of a check has not been injured by delay? When does an action lie upon a check against the drawer? What is always to be presumed until the contrary appear?

4. When the holder of a check commences an action against the drawer and indorser, what must he allege in the complaint? When is want of notice excused? If the want of funds is relied upon as an excuse

tice to the drawer, must be alleged in the complaint. In an action by the payee against the drawer of a check, presentment and notice are excused when the bank has become insolvent. When insolvency of the bank is alleged as an excuse for non-presentment and notice, the time of insolvency should be stated, that it may appear to be such as to excuse the holder from making the demand. After a check has been presented to the bank and certified, a subsequent presentment and demand must be made before an action can be commenced against the bank.

5. If a bill, note, or check be drawn, accepted, or indorsed by an agent, some agency must appear on the face of the instrument, in order to bind the principal. If the agent act in his own name, or act without authority, he is personally bound to the other contracting party.

6. The law of the place where a contract is made governs the form and solemnities of the contract. The law of the place where the contract is to be executed governs the execution. In the interpretation of a contract, the first object is to ascertain the real intention of the parties in their stipulations. If the full intention of the parties does not appear from the words of the contract, it may be interpreted by the customs and usages of the place where made. If a contract is to be performed in a foreign State or country, its validity, nature, obligation, and interpretation are governed by the law of the place of per-

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for want of notice to the drawer? In an action by the payee against the drawer of a check, when are presentment and notice both excused? When the insolvency of the bank is alleged as an excuse, what should be stated? After a check has been presented to the bank, and certified, what further is necessary before commencing an action against the bank?

5. If made by an agent, what must appear on the face of the instrument? If the agent act in his own name, or act without authority?

6. What is governed by the law of the place where the contract is made? What is governed by the law of the place where the contract is to be executed? In the interpretation of a contract, what is the first object? If the full intention of the parties does not appear from the words? If a contract is to be performed in a foreign State or country? By what is the rate of interest to be governed?

formance. This is the rule adopted by the Supreme Court of the United States. The rate of interest is to be governed by the law of the place where the contract is to be performed.

7. A guaranty is an undertaking by one person to be answerable for the payment of some debt, or performance of some contract, by another person, who himself remains liable to perform the same. It must be founded upon a valuable consideration. When the guaranty is collateral to the principal contract, and made at the same time, and becomes an essential ground of the credit, no separate consideration to the guarantor is necessary. If the guaranty be subsequent to the principal contract, a further consideration must be shown. The contract of the guarantor is nearly the same as that of a drawer of a bill of exchange. He contracts to pay the amount upon due presentment and notice of dishonor, within a reasonable time. If the guarantor sustains any loss or injury by the delay of the holder to make presentment and give notice, it will be the loss of the holder, and not of the guarantor.

8. Commercial paper must be made and indorsed by parties competent to contract. The parties are presumed to be competent, until the contrary is proved. The want of capacity must be alleged in the answer, and proved on the trial. It is a general rule, that persons must, be of full age, and of sound mind, to bind themselves as makers, acceptors, or indorsers of commercial paper. If an infant be a party to commercial paper, he may avoid his contract. A new promise, after the infant becomes of age, is binding. Persons who have been judicially declared

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7. What is a guaranty? Upon what founded? If the guaranty is collateral to the principal contract, and made at the same time, and becomes an essential ground of the credit? If the guaranty be subsequent to the principal contract? What does the contract of the guarantor resemble? Upon what does he contract to pay the amount? If the guarantor sustain any loss or injury by the delay of the holder?

8. By what parties must commercial paper be made? What is presumed as to the competency of the parties? Where must the want of capacity be alleged? What is the general rule as to capacity? If an infant be a party? If an infant make a new promise after he becomes

to be of unsound mind are incapable of making a valid contract.

9. Commercial paper must be founded upon a valuable consideration. It must be a legal consideration. A consideration founded on love, affection, or gratitude is not a sufficient consideration. To constitute a valuable consideration in law, one party must have acquired by the contract some legal right, interest, profit, or benefit; or the other party must have sustained some legal detriment, loss, responsibility, forbearance, or he must have performed some legal act, labor, or service. Either of these considerations will be sufficient to sustain commercial paper. If A. pay the debt of B., without the request of B., the law does not raise a presumption of liability on the part of B. to pay A.; but if B. afterwards make a promissory note therefor, it will be valid. The total want of consideration renders the paper void. The partial want of consideration affects the paper with nullity to the extent of such want of consideration. Commercial paper founded upon fraud, duress, imposition, circumvention, or taking undue advantage, is void. If the consideration be illegal, the paper is void.

10. Illegal considerations are divided into two general classes—1. Those against the general principles and doctrines of the common law; 2. Those prohibited by statute. Some of the considerations prohibited by the common law are: 1. Those given to, or received from, a public enemy in time of war, except those necessary for the purchase of the comforts or necessities of life; 2. Those in furtherance of immorality; 3. When the consideration is for the sale

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of full age? If a person has been judicially declared to be of unsound mind?

9. Upon what must commercial paper be founded? If the consideration be love, affection, gratitude? What is necessary to constitute a valuable consideration in law? If A. pay the debt of B., without the request of B.? What is the effect of a total want of consideration? A partial want of consideration? If founded on fraud, duress, imposition, circumvention, or taking undue advantage? If the consideration be illegal?

10. Into what two general classes are illegal considerations divided? What are some of the considerations prohibited by the common law?

of libellous or immoral and obscene books; 4. When the consideration is for the sale of lottery tickets, when the sale is prohibited by statute; 5. When the consideration is against sound morals, and detrimental to the public interest; 6. When the consideration is the restriction of trade or marriage; 7. When the consideration is for the perpetration, compounding, or concealing some crime.

11. Want of consideration and illegality of consideration is a good defence between the original parties to such want or illegality. It is also a good defence against a third party, who has given no value for the same, or who has received the same after it is overdue or has been dishonored. If the third party knew that the note or bill was void at the time of purchasing it, he will take it subject to the same equities as the party from whom he received it. When the consideration is illegal in part, it renders the entire consideration void. It is no defence that the note was known to the holder to be an accommodation note between the original parties, if he take it for value, in good faith, before it became due.

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## CHAPTER CII.

### DEFENCES.

1. UNDER the Code, the defendant may set forth in his answer all the defences he may have, whether they are defences at law or defences in equity. The answer must contain a general or special denial of each material alle-

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11. Between what parties is the want or illegality of the consideration a good defence? When is it a good defence between the parties to the want or illegality and third parties? If the third party knew that the note or bill was void at the time of purchasing it? If the consideration be illegal in part? If the note was known to the purchaser to be an accommodation note?

1. Under the Code, what may the defendant set up in his answer? What must the answer contain? Under a general denial, what evidence

gation in the complaint, or a denial of any knowledge or information thereof sufficient to form a belief. It must also contain such new matter as shall constitute a defence or counter-claim. The defendant may deny generally all the allegations of the complaint. Under a general denial, the defendant may introduce any evidence to disprove the facts which the plaintiff is bound to establish in order to sustain his action. Under the general issue, no *new facts* constituting a defence can be given in evidence. Such facts must be alleged in the answer. When the answer is a general denial, it is in the following form :

(Title.)

The answer of the defendant to the complaint herein, shows to this court—

I. That he denies, generally, each and every allegation of the complaint.

W. B. JACKSON, Def't's Attorney.

(Verification.)

The title to the answer is the same as the title to the complaint. The commencement of the answer in all cases is the same as that given in the above form.

2. A special denial is composed of new matter constituting a defence. The defendant must set up all new matter he intends to prove on the trial. If the defendant were an infant at the time he made the contract, he would allege that fact in his answer, in the following form :

(Title.)

(Commencement.)

I. That at the time of making the alleged note this defendant was an infant, under the age of twenty-one years—to wit, of the age of eighteen years.

(Verification.)

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may the defendant introduce? What cannot be introduced under a general denial? When must such facts be alleged? What is the form of a general denial? What is the form of the title to the answer? What is the form of the commencement of the answer, in all cases?

2. Of what is a special denial composed? What new matter must the defendant set up? If the defendant were an infant at the time he made the contract, where would he set up that fact? What would be the form of the answer in such case?

3. When defendant puts in an answer of payment, it is in the following form :

(Title.)

(Commencement.)

I. That on the 11th day of July, 1865, defendant paid to plaintiff the sum of five hundred dollars, in full payment of the note alleged in the complaint.

(Verification.)

4. If the defendant has made a tender of the amount claimed by plaintiff, and wishes to avoid the costs of the action, he pleads the tender in his answer, in the following form :

(Title.)

(Commencement.)

I. That before the commencement of this action—to wit, on the 11th day of July, 1865, at the city of New York—this defendant tendered to plaintiff the sum of five hundred dollars, in payment of said note, and interest mentioned in the complaint, but the plaintiff refused to receive the same.

II. That this defendant has ever remained, and still is, ready and willing to pay the plaintiff said sum, but the plaintiff has hitherto refused to receive the same.

III. That this defendant now brings the said sum of five hundred dollars into court, ready to be paid the plaintiff if he will accept the same.

(Verification.)

5. When the plaintiff has given a release, that fact is stated in the answer, in the following form :

(Title.)

(Commencement.)

I. That on the 11th day of July, 1865, in consideration of the sum of two hundred and fifty dollars, the plaintiff executed under his hand and

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3. When the defendant has paid the claim, what would be the form of his answer ?

4. When defendant has made a tender, and wishes to avail himself of that fact to avoid payment of costs, what would be the form of the answer ?

5. When plaintiff has given a release of the cause of action to the defendant, how is that fact alleged in the answer ?

seal, and delivered to this defendant, a release, of which the following is a copy.

(Copy, release.)

(Verification.)

6. When the Statute of Limitations has expired, that fact is set forth in the answer, as follows:

(Title.)

(Commencement.)

I. That the cause of action stated in the complaint did not accrue within six years before the commencement of this action.

(Verification.)

7. When the defence is want of consideration, that fact is set forth in the answer, as in the following form:

(Title.)

(Commencement.)

I. That defendant never received any consideration for said note, but it was an accommodation note, made and delivered to plaintiff at his request, and upon his promise that he would pay the same at maturity.

(Verification.)

8. In an action by the holder against the indorser, it is a good defence that the holder gave further time to the maker to pay the note. That defence is set up in the following form:

(Title.)

(Commencement.)

I. That at or about the time of the maturity of said note, the plaintiff, for a valuable consideration, and without the knowledge or consent of defendant, made an agreement with William Blake, the maker thereof, whereby he agreed to extend the time for payment of said note to William Blake for one month.

(Verification.)

9. When the defence of usury is alleged in the answer, it is in the following form:

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6. When the Statute of Limitations has expired, what is the form of the answer?

7. When the defence is the want of consideration?

8. When the holder has given further time to the maker?

9. When the defence is usury, how is that fact set forth in the answer?



(Title.)

(Commencement.)

I. That the note mentioned in the complaint was made and delivered to defendant upon a usurious agreement between the defendant and the plaintiff, that defendant should pay to plaintiff, and that plaintiff should reserve and secure to himself, for the loan of money, a greater sum than at the rate of seven per cent. per annum—to wit, at the rate of ten per cent. per annum.

II. That said sum was deducted and reserved from the amount of said note by plaintiff, and the balance only paid to this defendant—that is to say, that this defendant agreed to pay, and the plaintiff agreed to receive, the sum of fifty dollars for said loan, the plaintiff reserving and securing to himself, for the loan of money on said note until the maturity thereof, the sum of fifty dollars.

(Verification.)

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### CHAPTER CIII.

#### CRIMES AGAINST THE NATIONAL GOVERNMENT.

1. WHEN a civil action is pending in any of the United States courts, and one of the parties to the action dies, the action does not abate by the death of such party, but the executor or administrator of the deceased party may be substituted in the action. This does not apply to actions for personal injuries or actions for penalties, in which the cause of action does not survive the person.

2. Congress has the power to define and punish piracies and felonies committed on the high seas, and offences against the law of nations. Congress have enacted that—

1. If any person shall commit upon the high seas, or in any river or bay out of the jurisdiction of any particular State, murder or robbery or any other offence, which if committed within the body of the county would, by the laws of the United States, be punishable with death; or, 2. If any

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1. When a civil action is pending in any of the United States courts, and one of the parties to the action dies, what effect is produced? Who may be substituted for the deceased party in the action? To what actions does this provision not apply?

2. What crimes and felonies has Congress the power to define and

captain or mariner of any ship or other vessel shall piratically or feloniously run away with such ship or vessel, or any goods or merchandise to the value of fifty dollars, or yield such ship or vessel voluntarily to any pirate; or, 3. If any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship or goods committed to his trust, or shall make a revolt in the ship;—every such person shall be deemed, taken, and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death.

3. The trial of crimes committed on the high seas shall be in the Circuit Court of the United States in the district where the offender is arrested, or into which he may first be brought. All persons who aid, assist, counsel, or advise such piracies are declared to be accessories before the fact, and being thereof convicted, shall suffer death. Every person who entertains or conceals such pirate, or receives any of the property feloniously taken, knowing that such piracy has been committed, is deemed an accessory after the fact, and is liable to a fine not exceeding five hundred dollars, and imprisonment not exceeding three years.

4. If any person owing allegiance to the United States of America shall levy war against them, or shall adhere to their enemies, giving them aid and comfort, he shall be adjudged guilty of treason against the United States, and shall suffer death. If any person shall have knowledge of the commission of treason, and shall conceal the same, and not disclose the same to the President or some judge of the United States, or the governor or one of the judges or

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punish? Where must a piracy be committed? What acts there committed are adjudged to be piracy? What is the penalty for piracy?

3. In what court does the trial of crimes committed on the high seas take place? Who are declared to be accessories to piracy before the fact? What is the penalty? Who are declared to be accessories after the fact? What is the penalty?

4. Who may commit treason against the government of the United States? What acts constitute treason? What is the penalty for treason? If a person has knowledge of the commission of treason, to whom should

justices of the State, he is deemed guilty of misprision of treason, and is subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding seven years.

5. If any person within any fort, arsenal, dock-yard, magazine, or in any other place, or district of country under the sole and exclusive jurisdiction of the United States, shall commit the crime of wilful murder, on being convicted thereof, he shall suffer death. If any person shall have knowledge of the commission of such crime, and shall conceal the same, he shall be adjudged guilty of misprision of felony, and shall be fined not exceeding five hundred dollars, and imprisoned not exceeding three years.

6. If any person shall commit the crime of manslaughter in any place under the exclusive jurisdiction of the United States, on conviction, he shall be fined not exceeding one thousand dollars, and imprisoned not less than three years.

7. The government has defined the various crimes against *property* committed within its exclusive jurisdiction, such as larceny, embezzlement, receiving stolen goods, forgery of deeds, forgery of public securities, setting fire to public buildings, etc., and has affixed the penalties. It has defined the crimes against *public justice*, such as perjury, subornation of perjury, rescuing prisoners, corruptly influencing jurors, obstructing the administration of justice, bribery of custom-house officers, smuggling, bribery of members of Congress or public officers, accepting bribes, etc., and has affixed the penalties. It

he reveal it? If he does not, of what is he deemed guilty? What is the penalty?

5. Where must the crime of murder be committed, to come within the jurisdiction of the United States courts? What is the penalty? If any person shall have knowledge of such murder and shall conceal it, of what is he deemed guilty? What is the penalty?

6. What is the penalty for manslaughter committed within the jurisdiction of the United States courts?

7. What crimes against property have the national government de-

has defined the offences against the *coin*, such as counterfeiting gold or silver coin, uttering the same, counterfeiting copper coin, debasing the coin, counterfeiting foreign gold and silver coin in actual use and circulation, and importing such coin with intent to utter the same. It has affixed the penalties to each of these crimes.

8. The government has described the various crimes relating to the post-office, such as embezzling or destroying letters, stealing from letters, robbing the mail, obstructing the mail, stealing mail-bags, forging stamps, etc. It has affixed penalties to each of these crimes.

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## CHAPTER CIV.

### NATURALIZATION.

1. Congress has the power, under the constitution, to establish a uniform rule of naturalization. Any alien, being a free white person, may become a citizen of the United States, on the following conditions :

(1.) He must declare, on oath, that it is his intention, *bona fide*, to become a citizen of the United States, and to renounce forever all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever ; and particularly, by name, the prince, potentate, state, or sovereignty whereof such alien may at the time be a citizen or subject.

(2.) At the expiration of two years after declaring his intention to become a citizen, he may make application to be admitted. He must then declare, on oath, that he

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fined, and affixed their penalties? What crimes against public justice? What crimes against the coin?

8. What crimes relating to the post-office are defined and penalties affixed?

1. What power in reference to naturalization has Congress? What alien may become a citizen? What must he declare on oath? What to

will support the Constitution of the United States, and that he does solemnly and entirely renounce and adjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty whatever; and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject.

(3.) Such alien may declare his intention to become a citizen, and make his application to be admitted before any district or circuit court of the United States, or before any State court having common-law jurisdiction, and a seal and clerk or prothonotary. If the declaration be made before the clerk of either of these courts, it will be as valid as if made before the court.

2. The court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the State or Territory, where such court is at the time held, one year at least. It shall further appear to their satisfaction, that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. The residence and good moral character of the applicant must be established by witnesses produced and examined in court. The oath of the applicant is in no case allowed to prove his residence. The proceedings in court must be recorded by the clerk.

3. In case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he must make an express renunciation of

renounce? When may he make application to be admitted? What must he then declare on oath? Before whom may an alien declare his intentions, and make his application to be admitted to citizenship?

2. Of what must the court admitting such alien be satisfied? What must satisfactorily appear as to the character of the applicant? Where must the witnesses as to character and residence be examined? Is the oath of the applicant allowed in any case, to prove his residence? Are these proceedings recorded?

3. In case the alien has borne any hereditary title? If he be an alien

his title or order of nobility in the court to which his application shall be made, which renunciation shall be recorded in said court. No alien enemy can be admitted to become a citizen of the United States. Minor children of naturalized persons, if dwelling within the United States, are citizens of the United States.

4. When any alien, who has declared his intention to become a citizen, and has pursued the directions prescribed for that purpose, shall die before he is actually naturalized, his widow and children are considered as citizens of the United States, and are entitled to all the rights and privileges of citizens, upon taking the oath prescribed by law.

5. Any alien, being a free white person, and a minor, who shall have resided in the United States three years next preceding his arriving at the age of twenty-one years, and who shall have continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he shall have resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having declared his intention to become a citizen previous to his admission. Such alien must make the declaration required, at the time of his admission. He must further declare on oath, and prove to the satisfaction of the court, that for three years next preceding it has been the *bona-fide* intention of such alien to become a citizen of the United States.

6. Whenever war shall be declared between the United

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enemy? What effect does the naturalization of parents have upon their minor children dwelling within the United States?

4. If the alien die after declaring his intention, and before he is actually naturalized, what is the effect upon his widow and minor children?

5. If the alien resided three years in the United States during his minority? What declaration must he make? What oath must he take?

6. In case war is declared between the United States and any foreign

States and any foreign nation, or any invasion shall be attempted or threatened against the territory of the United States by any foreign nation, and the President of the United States shall make public proclamation of the event, all subjects of the hostile nation, being males of the age of fourteen years and upwards, who shall be within the United States, and not naturalized, shall be liable to be apprehended and removed as alien enemies. The time allowed for their removal is the time stipulated by treaty. If there be no treaty, then the President of the United States may ascertain and declare such reasonable time as may be consistent with public safety. It is made the duty of the several courts, State and national, having criminal jurisdiction, and the several judges thereof, upon complaint being made before them against any alien enemy residing within his jurisdiction, to cause the same to be duly apprehended, and brought before such court or judge. After a full hearing, he may order such alien to be removed out of the territory of the United States, or to give security for good behavior. It is made the duty of the marshal to execute such order.

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## CHAPTER CV.

### RULES OF EVIDENCE.

1. A WITNESS is one who gives evidence in a cause. What he states is called *evidence*, because it demonstrates and makes clear to the jury the truth or falsity of the points at issue. *Proof* is the result of evidence. Certain

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nation, how may all subjects of the hostile nation be regarded? To what are they liable? How is the time for their removal regulated? If there be no treaty?

1. What is a witness? What is evidence? What is proof? How have the rules of evidence been established? What is governed by these rules? What is the object to be attained? What is the means

general rules have been adopted, by judicial decisions and legislative enactment, governing—

- (1.) The admissibility of evidence.
- (2.) The effect of evidence.
- (3.) The order in which the evidence shall be produced.

The object to be attained is *to elicit the truth*. These rules are the means used for attaining that end.

RULE 1. No evidence can be admitted to prove any point not at issue in the pleadings.

RULE 2. The party upon which lies the burden of proof is required to produce such evidence as shall establish the truth of the point at issue.

RULE 3. In the trial of a prisoner on a criminal charge, the evidence of his guilt must be so clearly established as to remove all reasonable doubt of his innocence.

RULE 4. If a person is incompetent, on account of infancy, insanity, sentence for a felony, or for any other cause, he will not be permitted to give evidence.

RULE 5. A witness may be perfectly competent, and swear positively to a fact material to the issue, and yet be entitled to no credit from the jury.

RULE 6. The infamy of the character of the witness, shown by his cross-examination, or by other witnesses—his interest in the result, or the apparent influence on his mind—resentment or partiality shown in the voice or countenance—impair the credibility of his evidence.

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used for attaining that end? What evidence cannot be introduced? What evidence is the party upon which lies the burden of proof required to produce? What evidence is required in the trial of a prisoner on a criminal charge? If a witness is incompetent, on account of infancy, insanity, or sentence for a felony? If a witness is competent, and swears positively to a fact, are the jury required to believe his evidence? What circumstances may impair the credibility of the witness? In what does proof consist? What number of witnesses is required? Under what



RULE 7. Proof consists in evidence of facts given by witnesses of undoubted credit.

RULE 8. The evidence of one credible witness is sufficient to convict in all cases of felony, except treason and perjury.

RULE 9. Evidence must, in all cases, be given under the sanction of an oath, or its equivalent.

RULE 10. The oath must be administered by an officer duly authorized; otherwise, it is *coram non judice*.

RULE 11. Though a competent witness swears positively, his credibility is to be weighed; and if the jury believe that his evidence is entitled to no credit, they ought to reject it.

RULE 12. No evidence can be given against a prisoner, except in his presence.

RULE 13. No person can be convicted of treason, except on the evidence of two credible witnesses to the same overt act, or two different acts of the same treason.

RULE 14. Two witnesses are required in proof of perjury, or one witness strongly corroborated.

RULE 15. The free and voluntary confession of the accused to a magistrate, or to a private person, is admitted as proof of the crime to which it refers, and is entitled to the highest credit.

RULE 16. If confession be forced from the accused by

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sanction must evidence be given? By whom must the oath be administered? If the jury, on weighing the evidence of a witness who swears positively to a material fact, believe that his evidence is not credible, what ought they to do? Where must the evidence against a prisoner be given? What evidence is necessary to convict of treason? How many witnesses are required in cases of perjury? What confession of the accused may be admitted in evidence? If the confession be forced? If

fear of punishment or hope of reward, it is not entitled to credit, and is, therefore, rejected.

RULE 17. If any evidence is discovered in consequence of a confession made from fear of punishment or hope of reward, such evidence is admitted.

RULE 18. A voluntary confession, if the jury believe it to be true, is sufficient to convict the prisoner, with slight corroborating evidence to support it.

RULE 19. The whole confession must be taken together, and not a part of it.

RULE 20. Every witness must give his evidence under oath, or its equivalent.

RULE 21. All witnesses must be sworn according to the ceremony they consider most binding upon their consciences.

RULE 22. A preliminary oath may be administered to the witness, and he may be examined as to his competency. If found competent, he may be sworn in chief, and examined as to the matters at issue between the parties.

RULE 23. The preliminary examination must be confined to the competency of the witness, and the court will not allow any question to be answered, on such examination, which will affect his credit.

RULE 24. Infants under fourteen years of age will not

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any evidence be found in consequence of a confession made through fear of punishment or hope of reward? What weight has a voluntary confession? What part of the confession must be taken? Under what sanction must every witness give evidence? How sworn? For what purpose may a preliminary oath be administered? To what must the preliminary examination be confined? Who are not admitted to give evidence, if objected to, without the previous examination of the court? When may infants be admitted? What is the rule as to a witness who

be admitted to testify, if objected to, without examination as to their competency by the court.

RULE 25. If an infant appears, by answers to questions propounded to him by the court for the purpose, to understand the nature of an oath, and the consequence of swearing falsely, such infant may be sworn and examined at any age.

RULE 26. A deaf and dumb person, who understands the nature of an oath, and the consequences of swearing falsely, may be sworn and examined as a witness, through the medium of a person capable of conversing with him by signs.

RULE 27. A person of unsound mind cannot be a witness while he is under that insanity; but if he have lucid intervals, during such time he may be a witness.

RULE 28. No person, on account of his rank or station, is exempt from taking an oath when examined as a witness, either in civil or criminal cases.

RULE 29. The husband cannot be a witness for or against his wife, nor the wife a witness for or against her husband.

RULE 30. Where the wife is the party injured, and on whose person the crime was committed, she is a competent witness against her husband.

RULE 31. Where the husband is the party injured, and on whose person the crime was committed, he is a competent witness against his wife.

RULE 32. If such crime result in the death of the hus-

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is deaf and dumb? If the witness be of unsound mind? Who are not exempt from giving their evidence under oath? What is the rule as to husband and wife giving evidence for or against each other? If husband or wife be the party injured? If such injury result in the death of hus-

band or wife, the dying declarations of the deceased, made in apprehension of immediate death, may be given in evidence of the cause of death.

RULE 33. All relations by consanguinity or affinity, except husband and wife, are competent to give evidence for and against each other.

RULE 34. An accomplice, though he confess himself to be a felon, is nevertheless a competent witness; and his evidence may be left to the jury, although entirely uncorroborated by other evidence.

RULE 35. The promise of a pardon to an accomplice does not effect his competency, but goes merely to lessen his credit with the jury.

RULE 36. Conviction and sentence for a felony renders the convict incompetent to give evidence.

RULE 37. Conviction, without sentence, does not render the convict incompetent. To consummate the incapacity, judgment must follow.

RULE 38. A felony is a crime, the penalty of which may be death, or imprisonment in the state-prison.

RULE 39. When the competency of a witness is objected to, on the ground of conviction and sentence for a felony, the party objecting must produce in court the record of the sentence.

RULE 40. The competency of the witness is, in all cases, restored by a reversal of the judgment on appeal.

RULE 41. The competency of the witness is restored by

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band or wife? What relations may testify for or against each other? Is an accomplice allowed to give evidence? What is the effect if he have the promise of pardon? What effect does conviction and sentence for felony have upon a witness? If he be convicted, but not sentenced?

pardon in all cases, except when the conviction and sentence was for perjury, or subornation of perjury.

RULE 42. The evidence of the reversal of the judgment is the record of the court. The evidence of the pardon is the pardon itself, produced in court under seal.

RULE 43. Neither counsel or attorneys are allowed to disclose the secrets of their clients communicated to them by their clients, in the case in which they are retained.

RULE 44. Counsel and attorneys may be examined as to facts which came to their knowledge previous to being retained, or which they might have known without being retained, which are not matters of secrecy committed to them by their clients.

RULE 45. An attorney may be called to prove the handwriting of his client.

RULE 46. The clerk of a grand-jury is not allowed to reveal the evidence before the jury.

RULE 47. Grand-jurors are sworn to keep secret the transactions of the jury.

RULE 48. No question can be put to a witness, the answer to which might oblige him to accuse himself of crime, or show his own turpitude or infamy.

RULE 49. When a witness has been convicted, and suffered the penalty, he may be questioned as to the fact.

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What is a felony? How is the incompetency of a witness on account of conviction and sentence for felony proved? What is the effect of reversal on appeal? What is the effect of a pardon? What is the evidence of reversal of the judgment? What is the evidence of a pardon? What are attorneys and counsel prohibited from disclosing? As to what facts may they be examined? Who may be called to prove the handwriting? What is the clerk of the grand-jury prohibited from revealing? To what are grand-jurors sworn? What questions cannot be put to a witness? If a witness has been convicted, and suffered the penalty? Can

He may be asked if he was charged with, or tried for a particular offence, and he is bound to answer the question.

**RULE 50.** A witness is not permitted to read his evidence from any written or printed paper.

**RULE 51.** A witness may refresh his memory by inspecting a book or paper, if he can afterwards swear to the fact from his own recollection. If he cannot swear to the fact from recollection, any further than as finding it entered in a book or paper, the original book or paper must be put in evidence.

**RULE 52.** At common law, in capital cases, no evidence can be given against the prisoner, except in his presence.

**RULE 53.** In case any witness examined before the coroner is dead, or unable to travel, and oath is made thereof, the examination of such witness so dead, or unable to travel, may be read; the coroner first making oath that such examination is the same which he took upon oath, without any addition or alteration whatever.

**RULE 54.** In case an oath shall be made that any witness who has been examined by the coroner, and was absent, was detained by the procurement of the prisoner, and if the court are satisfied by evidence that the witness was so detained, his examination may be read.

**RULE 55.** If a witness who has been examined by the coroner be absent, and oath be made that due diligence has been used by the prosecution to find him, that will not be sufficient to authorize the reading of his examination.

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a witness read his evidence from a written or printed paper? How may a witness refresh his memory? If after inspecting a book or paper he is unable to swear to the fact from recollection? Where must the evidence be given in capital cases? In case a witness who was examined before the coroner is dead, or is unable to travel? If a witness who was examined by the coroner is absent by the procurement of the prisoner? If a witness who has been examined by the coroner be absent, and due diligence has been used to find him? When a witness cannot be pro-

RULE 56. When a witness cannot be procured to testify *viva voce*, on account of death, sickness, or absence, then depositions may be read for or against the prisoner.

RULE 57. The evidence given by the witness *viva voce*, in the presence of the prisoner, may, at the request of the prisoner, be compared with his deposition previously made, to see if he has varied therefrom.

RULE 58. When a witness varies from his own evidence given on a former trial, in relation to the same matter, such variance may be given in evidence to decrease the weight of his evidence.

RULE 59. The prisoner is allowed to produce evidence of his previous good character. Good character is of great weight in every case, and requires particular attention when the charge is founded on circumstantial evidence.

RULE 60. The prosecution cannot give evidence of the bad character of the prisoner, unless the prisoner has called witnesses to prove his good character.

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## CHAPTER CIV.

### FURTHER RULES OF EVIDENCE.

RULE 61. The credit of a witness can only be impeached by showing his general character and reputation. No

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cured to testify on account of death, sickness, or absence? With what may the evidence of the witness given *viva voce* in court be compared? When a witness varies from his own evidence given on a former trial, what is the effect? What evidence, as to character, is a prisoner allowed to introduce? What is the effect of evidence of good character? When only can the prosecution show the bad character of the prisoner?

How only can the credit of a witness be impeached? Can a party con-

proof of the commission of crimes, of which he has never been convicted, can be offered.

RULE 62. A party is never permitted to introduce general evidence to discredit his own witness. If the witness proves facts which are against the party who calls him, the party may introduce other witnesses to prove the contrary.

RULE 63. In civil actions, a witness is not bound to attend court unless his fees are tendered to him. In criminal proceedings, the rule is otherwise. Witnesses are in such case bound unconditionally to attend the trial when summoned, and may be required to give bonds to appear and testify without remuneration.

RULE 64. The best evidence of which the case, according to its real circumstances, will admit must be produced, both in civil and criminal cases. If a title-deed is lost, a copy may be introduced in evidence; and if no copy can be produced, parol evidence may be given of its contents.

RULE 65. Parol evidence cannot be introduced to *contradict or vary* the terms of a written agreement.

RULE 66. In a criminal prosecution, the witness is not required to produce any evidence against himself.

RULE 67. In a criminal prosecution, the district attorney may give notice to the prisoner to produce a paper in court which is in his possession; and in case he neglects to produce it, the district attorney may give evidence of its contents.

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tradict his own witness? If the witness proves facts which are against the party calling him, what may be done? What is necessary in order to bind a witness to attend in civil cases? In criminal cases? What class of evidence must be introduced? If a title-deed be lost, how may it be proved? Is parol evidence generally admissible, if the agreement be in writing? Can a person charged with crime be compelled to produce any evidence against himself? If he has papers in his possession, what may the district attorney do, if he wishes them produced in court?



**RULE 68.** Whenever the original is a matter of public record, and cannot be produced in evidence, a certified copy thereof may be produced, unless there were alterations or erasures in the original.

**RULE 69.** Where an original is of a private nature, a copy is not evidence, unless the original has been lost or destroyed.

**RULE 70.** What a witness has been heard to say out of court may be given in evidence, to contradict or confirm his evidence given in court.

**RULE 71.** On a trial for homicide, the declarations of the deceased, in reference to the mortal wound, if made with consciousness of immediate death, may be received against the prisoner, although the declaration was not made in the presence of the prisoner.

**RULE 72.** The declarations of a convict at the place of execution cannot be given in evidence as dying declarations.

**RULE 73.** Every witness has a right to explain the evidence he has given; and if doubt arises after his examination is closed, the court may call upon him for such explanation.

**RULE 74.** Written evidence is preferred to unwritten, in the scale of probability, when they stand in opposition to each other. The verbal testimony of an honest man, fortified by the solemnity of an oath, is yet liable to the imperfections of memory. Contracts reduced to writing

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When the original writing is a public record, which cannot be produced in court, what may be done? If a witness has made statements out of court? What declarations of deceased persons may be introduced in evidence? Is the declaration of a convict at the place of execution such a declaration? What explanation may a witness give of his evidence? Which is entitled to a preference, written or unwritten evidence? Why?

are more permanently secured than they could possibly have been if retained in memory only.

**RULE 75.** The mere comparison of handwriting is admissible evidence under particular circumstances, resulting from the necessity of the case in civil actions, yet it is not admissible evidence in criminal prosecutions. The comparison of handwriting is mere presumption, founded on likeness, which may easily fail.

**RULE 76.** If papers are found in the possession of a prisoner, and the writing thereof is found to be in his hand, proved by persons who have seen him write, they are admissible evidence on the part of the prosecution.

**RULE 77.** The proof of handwriting is the same in criminal cases as in civil cases. The witness is asked, if he is acquainted with the handwriting of the prisoner? If he answer, "Yes," he is asked how he became acquainted with his handwriting. If he answers, "I have seen him write," or "I have received communications from him over his signature, which I have acted upon, and which action has been confirmed by the person whose handwriting it purported to be," the paper is handed to the witness, and he is asked, "Do you believe this to be the handwriting of the prisoner?"

**RULE 78.** Written or printed papers found in the possession of the prisoner may be read against him in evidence.

**RULE 79.** Papers relative to any previously formed design to commit treason may be read in evidence as overt acts of that treason.

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Is the comparison of handwriting allowed in civil cases? Is it in criminal cases? If papers are found in the possession of the prisoner, and are shown to be in his handwriting? Does the proof of handwriting differ in civil and criminal cases? What questions are put to the witness produced to prove the handwriting of the paper produced? If papers be found in the possession of the prisoner? If they relate to any previously

**RULE 80.** Letters forwarded for the purpose of a treasonable correspondence, whether found in possession of the accused, or intercepted or stopped in the post-office, may be read in evidence to prove the treason.

**RULE 81.** The final judgment, or sentence of a court having competent jurisdiction of the subject determined, is conclusive in every other court having concurrent jurisdiction. An acquittal on a criminal charge in a foreign country may be pleaded in bar of an indictment for the same offence.

**RULE 82.** If a principal and accessory are joined in one indictment, the accessory may enter into the full defence of the principal, and avail himself of every matter of fact and every point of law tending to his acquittal, which also tends to his own acquittal.

**RULE 83.** The conviction of the principal is sufficient evidence of the crime to put the accessory upon his trial, but it is not conclusive evidence, and may be rebutted.

**RULE 84.** If it appear upon the trial of the accessory, that the offence of which the principal was convicted did not amount to the felony with which he was charged, the accessory may avail himself thereof and be acquitted.

**RULE 85.** When it is necessary to prove that a person is in a public office or capacity, it is sufficient to show that he acted upon the occasion as such public officer, without producing the written instrument by which he was appointed.

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formed design to commit treason? If letters are forwarded for the purpose of a treasonable correspondence? What is the effect of the final judgment or sentence of a court of competent jurisdiction? If a principal and accessory are joined in the same indictment, what may the accessory do? What is sufficient evidence of the crime to put the accessory on trial? If on the trial of the accessory it shall appear that the offence of which the principal was convicted did not amount to the felony with which he was charged? What evidence is necessary to show that a per-

RULE 86. If an officer to whom a warrant is directed be killed in attempting to make an arrest, it is murder, though it appear in evidence that the warrant was illegal.

RULE 87. When the time proved differs from that laid in the indictment, the jury may find the prisoner guilty either generally, or specially on the day on which the fact was proved.

RULE 88. Where a *place certain* is made part of the description of the fact charged in the indictment, the least variance as to such place between the evidence and the indictment is fatal to the indictment.

RULE 89. A place named only for a *venue* in the indictment is not material in evidence. Proof of the same crime at any other place in the same county sustains the indictment.

RULE 90. A variance between the indictment and the evidence, in a capital case, as to the instrument used is not material, if the deceased be proved to have died the same kind of death as that charged in the indictment.

RULE 91. The evidence of poisoning, or any other kind of killing, where no weapon is used, will not maintain an indictment for killing with a weapon. These are different kinds of death.

RULE 92. All who are present, aiding and assisting, or ready to afford assistance if necessary, are equally principals with him who gave the fatal blow of which the deceased died.

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son was in a public office? If an officer to whom a warrant is directed be killed in attempting to make an arrest? If the time proved differs from that laid in the indictment? If a *place certain* is made part of the description of the fact? If the place be named only for a *venue*? What is the effect of a variance between the instrument described in the indictment and the one proved on the trial? If the indictment is for killing with a weapon, and the evidence shows that the death was caused by

RULE 93. The fact of killing being first proved, all the circumstances of accident, necessity, etc., are to be proved by the prisoner, which tend to justify, excuse, or alleviate the killing.

RULE 94. When a blow aimed at one person falls upon another, and kills him, this constitutes murder.

RULE 95. In all cases of homicide caused by persons following their lawful occupation, it is incumbent on the defendant to show by evidence that he has used all due and necessary caution.

RULE 96. If an officer who is to execute the sentence of death on a criminal varies from the judgment, he is guilty of murder.

RULE 97. When a person having authority to arrest, using proper means for that purpose, is resisted in so doing, and the party making resistance is killed in the struggle, evidence of such resistance justifies the homicide.

RULE 98. But if the officer be killed, it will be murder in all against whom there is evidence of having taken part in such resistance.

RULE 99. When a felony has been committed, and the felon flies from justice, if in the pursuit the party flying is killed when he cannot be otherwise overtaken, evidence of the felony and the flight will justify the homicide.

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poisoning? Who are equally principals with him who gives the fatal blow of which the injured party dies? After the fact of killing is proved, what is to be proved by the prisoner? When a blow aimed at one person falls upon another and kills him? In case of homicide caused by a person following his lawful occupation, what is incumbent on the person causing the homicide? If an officer who is to execute the sentence of death on a criminal varies from the judgment? When a person having authority to make an arrest is resisted, and the party making the resistance is killed in the struggle? If the officer be killed? When a felony has been committed and the felon flies from justice, and is killed when

RULE 100. In a case of justifiable self-defence, the injured party may repel force by force, in defence of his person, habitation, or property, against a person attempting to commit a felony upon either. In this case, he is not obliged to retreat, but may pursue his adversary until he finds himself out of danger; and if in a conflict he happens to kill the assailant, such killing is justifiable.

RULE 101. In case of mutual conflict, if a party would excuse himself upon the ground of self-defence, he must show that before he gave the fatal blow he had declined any further conflict, and retreated as far as he could with safety, and that he killed his adversary through necessity, and to avoid being killed.

RULE 102. Duelling, if death ensues, is murder.

RULE 103. Ministers of justice, while in the execution of their office, are under the peculiar protection of the law; and every man who renders assistance to an officer, is under the same protection as the officer himself.

RULE 104. In the execution of civil process, the officer cannot justify the breaking open of an outside door or window; for a man's house is his castle, for safety and repose to himself and family, and such breaking would be a trespass.

RULE 105. If the officer, in the execution of civil process, finds the door open or gains admission from a person within, he does not commit a trespass in entering the house; and he may break open inside doors, if he finds it necessary to execute his process.

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he could not be otherwise overtaken? In case of justifiable self-defence, what may the injured party do? Is he obliged to retreat? If in the conflict he kills the assailant? In case of a mutual conflict, what must the party, who wishes to excuse himself on the ground of self-defence, show? If death is caused by duelling? Are the ministers of the law under any special protection while in the execution of their office? If others are rendering them assistance? Can the officer in executing a

RULE 106. Where a stranger takes refuge in the house of another, the house is not his castle; neither has a lodger the privilege of the occupant of the house.

RULE 107. When a felony has been committed, or when an officer holds a process, founded on a breach of the peace, the party's own house is no longer a castle for him. After the officer has given notice that he holds such process, and demanded entrance, and the same has been refused, the doors or windows may be forced open, and the accused arrested.

RULE 108. If a man be found murdered, and another be found running from the place in haste, with the weapon which caused the death of the deceased, a strong presumption, next to the sight of the act itself, would be raised, that such person was the murderer.

RULE 109. The jury are in all cases to weigh the evidence, and to decide according to the weight of evidence. If, upon weighing the evidence, the guilt and innocence of the prisoner are equally sustained, so as to raise a doubt in the minds of the jury, the prisoner is entitled to the benefit of that doubt.

RULE 110. It is not a sufficient ground to acquit, that there is a *possibility* that the accused may be innocent of the charge; for there is no case where a jury can procure *absolute certainty* from circumstantial evidence.

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civil process break the outside door or window of defendant's dwelling-house? For what purpose is a man's house his castle? If the outside door be open, or if the officer gain admission from within? What may he then do? If a stranger take refuge in the house of another? If he be only a lodger in the house? If a felony or breach of the peace has been committed by the occupant of the house? What may the officer do? If a man be found murdered and another be found running from the place in haste, with the weapon which caused the death of the deceased? What are the jury in all cases to do? How are they to decide? If upon weighing the evidence, the guilt and innocence of the prisoner are equally sustained, so as to leave a reasonable doubt in the minds of the jury? If there is a *possibility* that the accused may be in-

RULE 111. The introduction of false evidence on the part of the defence raises a presumption against the prisoner.

RULE 112. To support an indictment for larceny, there must be evidence to show a felonious and fraudulent taking and carrying away of the goods.

RULE 113. If it appear that a horse was hired in good faith, or that goods were sold and credit given, the fraudulent conversion of the property afterwards cannot constitute larceny; for a felonious design must exist at the time the property is obtained.

RULE 114. When it is shown, by evidence, that the possession of the property was obtained with a fraudulent design to steal it, whatever may have been the pretence, the act constitutes the crime of larceny.

RULE 115. Whenever one person assaults another with such circumstances of terror as to put him in fear, and cause him, by reason of such fear, to part with his money or other property, *the taking* thereof is robbery.

RULE 116. To constitute a burglary, there must be a felonious breaking and entering of a building of another, with intent to commit some crime therein.

RULE 117. The fact of breaking is sufficiently established by proving the lifting of a latch, taking out a pane of glass, descent down the chimney, turning a key when the door is locked on the inside, obtaining entrance by fraud, stratagem, or threats.

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nocent of the charge? If defendant introduces false evidence? What evidences is required to support an indictment for larceny? If it appear that a horse was hired in good faith, or goods purchased and credit given, and there was afterwards a fraudulent conversion? When must a felonious design have existed? When it is shown by evidence that the possession of the property was obtained with a fraudulent design to steal it? What will constitute robbery? What will constitute bur-



RULE 118. The entry of the hand or foot, or any instrument or weapon, is a sufficient entry.

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## CHAPTER CVII.

### COMPETENCY OF EVIDENCE.

1. THERE are certain conditions precedent to be established before evidence can be submitted to the consideration of the jury.

(1.) The witness must be decided to be competent by the judge.

(2.) An oath, or its equivalent, must be administered.

(3.) If a dying declaration is to be offered in evidence, it must be shown that the person making the declaration was in expectation of immediate death.

(4.) If the copy or contents of an instrument in writing is to be proved, it must be shown that diligent and unavailing search has been made to find the original.

2. It is the province of the judge alone to decide whether these conditions precedent have been fulfilled. If witnesses are offered to prove such conditions precedent, the court must decide upon the evidence. If rebutting evidence be offered, the court has no power to submit the question of competency to a jury.

3. To render the dying declarations of a deceased person

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glary? What will constitute a breaking? What will constitute an entry?

1. What is to be established, before evidence can be submitted to the consideration of the jury? What must be decided as to competency? What must be administered to the witness? If a dying declaration is to be offered in evidence, what must be shown as a condition precedent? If a copy of an instrument in writing is to be proved, what must be shown as a condition precedent?

2. By whom is it to be decided whether or not these conditions precedent have been fulfilled? If witnesses are offered to prove such conditions precedent, who must decide upon the evidence? If rebutting evidence be offered?

admissible, it must be shown that the party was in a dying condition, and conscious of the fact when he made the declaration. It is the apprehension of immediate death that renders the declaration competent evidence, and equivalent to its being made under oath. The party seeking to prove the contents of a lost paper is required to exhaust all the means of discovery which may be suggested by the nature of the case. When the instrument may reasonably be supposed to be in the hands of the other party, notice should be given him to produce it, or that oral evidence would be given of its contents. When the instrument is in the hands of a third party, residing out of the jurisdiction of the court, its contents may be proved without giving notice to the opposite party to produce it.

4. Where the declarations of an agent are admissible, it must first be proved to the court that the person making the declaration was an agent. When the question of admissibility depends upon oral evidence, the evidence must necessarily be given in the presence of the jury. Where it depends on written evidence, the evidence should be handed to the court, without stating the contents, in the presence of the jury. Persons of unsound mind are incompetent to testify, and are excluded. Want of reason must be proved to the court, as other facts are proved. If a person is called as a witness in a state of intoxication, the court have the power to decide on the incompetency from their own view of the situation of the witness.

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3. What is a condition precedent to the admission of a dying declaration in evidence? What renders the declaration competent evidence? What is a party seeking to introduce evidence of the contents of a lost paper required to do? When the instrument may reasonably be supposed to be in the hands of the opposite party? When it is in the hands of a third party, residing out of the jurisdiction of the court?

4. When the declarations of an agent are admissible, what must first be proved? When the question of admissibility depends upon oral evidence, where must it be given? Where it depends upon written evidence? If a witness is of unsound mind? How is insanity shown? If a person is called as a witness in a state of intoxication?

5. There is no particular age at which a witness must arrive, in order to be competent to testify. When an infant is offered as a witness, the court must decide whether he is competent or not. The credibility and weight of his evidence is a question for the jury. The method of administering an oath to a witness in New York is as follows. The witness lays his right hand upon the Bible, while the person administering repeats the words of the oath. The witness then kisses the Bible. Those who desire it may "swear in the presence of the everliving God," with the uplifted hand. If a person has conscientious scruples against taking an oath in any form, he may affirm in the following language: "You do solemnly, sincerely, and truly affirm." The court may adopt that form which the witness shall consider the most solemn and binding upon his conscience. If the witness believe in any other than the Christian religion, he may be sworn according to the ceremonies of that religion. A Jew generally takes the oath with his head covered. In whatever form the oath is administered, the meaning and obligation is the same. In most of the States, no witness is incompetent to testify on account of his religious belief. In some of the States, however, atheists are not competent witnesses. The incompetency of the witness, from defect in his religious belief, must be proved by his conversations and declarations upon the subject. The witness cannot be compelled to declare his belief, but this is proved by other witnesses.

6. Formerly, no person who had any pecuniary interest in the result of the action could be a witness. By the

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5. Is any particular age necessary to the competency of a witness? When a witness is an infant, who decides his competency? Who determines his credibility? What is the method of administering an oath? What form may the court adopt? If the witness believes in any other than the Christian religion? How does a Jew generally take the oath? Is the meaning the same, if administered in different forms? What effect does the religious belief of a witness have upon his competency? How is the religious belief of the witness proved? Can a witness be compelled to declare his belief?

6. What was the former rule as to interest? What is the present

statutes of New York and other States, no person is excluded on the ground of interest; and the parties themselves may be sworn as witnesses. The usual method of testing the competency of a witness is to administer to him a preliminary oath, called a *voir dire*. He is sworn to answer all questions that may be put to him touching his competency. The party objecting to the competency of the witness may produce testimony to show that he is incompetent, or may have him sworn and examined. It rests upon the party objecting to show that the witness is incompetent. When the party entitled to object has no means of knowing the incompetency before the examination, he may have the testimony stricken out, if the witness is found to be incompetent.

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## CHAPTER CVIII.

### KINDS OF EVIDENCE.

#### 1. THERE are two kinds of evidence—

- (1.) Oral evidence.
- (2.) Written evidence.

Oral evidence is that which is given *viva voce*, either in open court or before a magistrate. Every court of competent authority to hear and determine an action has the inherent power to summon and compel the attendance of witnesses, for the purpose of proving the facts at issue. The ordinary summons, is a subpoena directed to the witness, commanding him to appear at the court to give evidence in a cause therein described, pending in such court,

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rule as to interest in New York. What is the usual method of testing the competency of a witness? What two methods may be adopted in testing the competency of the witness? Can the party objecting produce evidence to show the incompetency of the witness? When must the objection be raised?

1. How many kinds of evidence? What is oral evidence? What inherent power has every court? To whom is the subpoena directed?

under a certain penalty named in the subpoena. If the witness is expected to produce any books or papers in his possession, a clause to that effect is inserted in the subpoena. It is then called a *subpœna duces tecum*.

2. The service of the subpoena is regulated by the statutes of the several States, or by the rules of the court. The reasonable expenses of the witness are fixed by statute at a specific sum for each day's attendance, and for each mile's travel from the residence of the witness to the place of trial and back. The sum is not the same in all the States. In some States, it is sufficient to tender to the witness his travelling fee, and the fee for one day's attendance. In criminal cases, no tender is necessary. If any thing is paid in such cases, it is paid from the public treasury. The accused is entitled to compulsory process for obtaining witnesses in his favor. If the witness waive his right to any fee in a civil case, a tender is not necessary. It is necessary in all cases, in order to compel the attendance of a witness, that he be summoned. If a witness is in custody, or is in the military or naval service, and not at liberty to attend without leave of his superior officer, which he cannot obtain, he may be brought into court to testify by a writ of *habeas corpus ad testificandum*. Where the accused is held for trial, the witnesses may be required to give security to appear in court on the day of trial, and give evidence in the case. If any witness cannot give such security, he may be committed to prison until that time.

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What does it command the witness to do? If the witness is required to produce any books or papers? What is such subpoena called?

2. How is the service of the subpoena regulated? How are the reasonable expenses of the witness fixed? Is it the same in all the States? What must be tendered to the witness when subpoenaed? Is any tender necessary in criminal cases? If any thing is paid in such case, out of what is it paid? To what is the accused entitled in criminal cases? If a witness waive his right to his fees in civil cases? What is necessary in all cases, to compel a witness to attend? If the witness is in custody, or under a superior officer? When the accused is held for trial, how may the attendance of the witness be secured? If the witness cannot give security?

3. Service of the subpoena must be made a reasonable time before trial. This reasonable time is fixed in some States by statute. At least one day's notice, at the shortest distance, should be given. An additional day's notice is usually required for every twenty miles travelled. The service must be made personally, by showing the original, and delivering to, and leaving with, the witness a copy of the subpoena.

4. Witnesses are privileged from arrest on civil process—

- (1.) In going to,
- (2.) In remaining at, and
- (3.) In returning from court.

The parties to the action are entitled to the same privilege. When a witness has been duly summoned, and his fees paid or tendered, or tender waived, if he neglect to appear, he is deemed guilty of a contempt of court. He may be proceeded against by an attachment. The party applying for the attachment must show, by affidavit or otherwise—

- (1.) That the subpoena was seasonably and personally served on the witness.
- (2.) That his fees were paid or tendered, or the tender expressly waived.
- (3.) That every thing has been done necessary to call for his attendance.
- (4.) That such witness is a material witness.

If the witness, being in court, refuse to testify, he is guilty of contempt. The punishment, in all cases of contempt, is fine and imprisonment.

5. The deposition of a witness may be taken when he resides abroad, or when he is sick or infirm, and unable

3. When must the subpoena be served? How is the time fixed? What is the shortest time? An additional day is allowed for how many miles? How is the service made?

4. When are witnesses and parties to the suit privileged from arrest? If a witness has been duly summoned, and his fees paid or tendered, and he neglects to attend? How proceeded against? What must the party applying for the attachment show to the court? If the witness, being in court, refuse to testify? What is the punishment for contempt?

5. When may the deposition of witnesses be taken? Before whom?

to attend. It may be taken before a magistrate or commissioner, duly authorized.

6. The object of the examination of a witness is to elicit the truth from him. On the suggestion of either party, the court may order that the witnesses be examined separate and apart from each other. When a witness has been sworn, he is first examined by the party producing him. This examination is called the direct examination. He may then be examined by the opposite party. This examination is called the cross-examination. The examination is conducted orally, in open court, under the regulation of the judge, in the presence of the jury, the parties, and their counsel. Leading questions are not allowed to be put on the direct examination. Leading questions are such as suggest to the witness the answer desired, and such as may be answered by Yes or No. The witness is to be examined in reference to matters of fact within his own knowledge. There are some cases in which leading questions may be asked on the direct examination :

- (1.) Where the witness appears to be hostile to the party producing him.
- (2.) Where he is in the interest of the other party.
- (3.) Where he is unwilling to give evidence.
- (4.) Where an omission in the evidence is caused by want of recollection.

A witness may be allowed to refresh his memory by the use of a written instrument, memorandum, or entry in a book. A witness is allowed to express his opinion or belief, when he testifies to the identity of a person or to the handwriting.

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6. What is the object of the examination of a witness? On the suggestion of either party, what may the court do? When a witness has been sworn, by whom is he first examined? What is this examination called? By whom is he then examined? What is this examination called? How is the examination conducted? Under whose regulation? In whose presence? What questions are not allowed to be put on the direct examination? What are leading questions? In reference to what is the witness to be examined? In what cases may leading ques-

7. A witness is not compelled to answer a question, when the answer will have a tendency to expose him to any criminal charge or penalty, or to any forfeiture of estate. The court will not prevent a witness from answering, if he chooses. If, after being notified of his rights, he chooses to answer, he will be bound to answer all other questions put to him relative to the same transaction. If the witness declines to answer, no inference of the truth of the fact is permitted to be drawn from that circumstance.

8. After a witness has been examined in chief, his direct examination being closed, his credit may be impeached—

(1.) By disproving the statements of the witness.

(2.) By introducing evidence affecting his character for truth and veracity.

In impeaching the character of the witness, the examination must be confined to his general reputation. The impeaching witness should be asked if he knows the general reputation of the witness to be impeached, among his neighbors. If he answer in the affirmative, he is asked, "Is it good or bad?" If he answer, "It is bad," he is then asked, "From what you know of his general reputation, would you believe him under oath?" In answer to such evidence, the other party may cross-examine the impeaching witnesses as to the persons he has heard speak of the impeached witness; and they may also impeach the impeaching witnesses, and support the character of their own witness by fresh evidence. A witness may also be

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tions be put on the direct examination? How may a witness be allowed to refresh his memory? When may a witness express his opinion?

7. When is a witness not compelled to answer? Will the court prevent the witness from answering? If, after being notified of his rights, he chooses to answer? If the witness decline to answer?

8. After a witness has been examined in chief, how may his credit be impeached? In impeaching the character of the witness, to what must the examination be confined? What should the impeaching witness be asked? If he answer in the affirmative, what is the second question? If he answer in the affirmative, what is the third question? What may the other party then do?



impeached by proving that he has made statements out of court contrary to his evidence in court.

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## CHAPTER CIX.

### WRITTEN EVIDENCE.

1. THE courts will recognize, without other proof than inspection—

- (1.) The national and State seals, and the seals of foreign States which have been recognized by our government.
- (2.) The seals of foreign courts of admiralty.
- (3.) Seals of notaries public.
- (4.) Public statutes.

Respecting public statutes, reference is had to a copy from the legislative rolls, or to the book printed by public authority. Acts of a State may be proved by producing a copy printed by authority of the government. Proclamations and other acts of the executive are proved by producing the government paper in which they were authorized to be printed. The evidence that a particular person has been recognized as a foreign minister is the certificate of the secretary of state. Those books are recognized by law which the law requires to be kept.

2. The statute laws of a sister State are proved by producing the printed volume printed by the authority of the State. The proof of a record is made by producing the record, or a certified copy thereof. The judgment of inferior courts is usually proved by producing the record.

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1. What will the courts recognize without other proof than inspection? Respecting public statutes, to what is reference had? How may acts of State be proved? How are proclamations and other acts of the executive proved? What is the evidence that a particular person has been recognized as a foreign minister? What books are recognized by law?

2. How are the statute laws of a sister State proved? How is the proof of a record made? How is the judgment of an inferior court

Marriages are to be governed by the law of the place where they are celebrated. If valid there, they are valid everywhere. There are some exceptions—

- (1.) Those involving polygamy and incest.
- (2.) Those prohibited by public law of the country, from motives of policy.
- (3.) Those celebrated in foreign countries, between parties entitled to the benefit of the laws of their own country.

When private writings are produced in evidence, they must be proved to be genuine. If, on production of an instrument in writing, it appears to have been altered, it is incumbent on the party offering it to explain the alterations. Every alteration on the face of a written instrument detracts from its credit and renders it suspicious. The party claiming under it is ordinarily bound to remove this suspicion. If the alteration is noted in the attestation clause as having been made before its execution, it is sufficient to relieve it from suspicion. If any ground of suspicion is apparent on the face of the instrument, the law leaves the question of the time when it was done, as well as the person by whom it was done, and the intent with which it was done, as matters of fact to be found by the jury, upon proof to be adduced by the party offering the instrument in evidence. An instrument derives its legal virtue from its being the sole depository of the agreement of the parties, solemnly adopted as such, and attested by the signature of the party engaging to perform it.

3. A material alteration is one which causes the instrument to speak a language different in legal effect from the

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proved? By what law are marriages governed? What are the exceptions? When private writings are produced? If an instrument appears to be altered? What is the effect of an alteration? Who is bound to remove the suspicion? If the alteration is noted in the attestation clause? If any grounds of suspicion are apparent upon the face of the instrument, to whom is the questions involved referred? From what does an instrument derive its legal virtue?

3. What is a material alteration? When does an alteration render the

original. If an alteration be fraudulent, whether material or immaterial, the instrument is void, if made by the party claiming under it. If the alterations are made by the consent of both parties, the instrument is valid. When an instrument is produced in court, it must be proved by the subscribing witness, except—

- (1.) When the instrument is more than thirty years old.
- (2.) When it is produced by the adverse party pursuant to notice, the party producing it claiming an interest under it.
- (3.) When the subscribing witness cannot be found.

If there be more than one subscribing witness, the absence of all must be satisfactorily accounted for, in order to let in secondary evidence.

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## CHAPTER CX.

### HEARSAY EVIDENCE.

1. THE most satisfactory evidence is that which is afforded by our own senses. When this cannot be had, the law requires the evidence of those who can speak from their own personal knowledge. It is not necessary that the witness in all cases have personal knowledge of the main fact in the controversy. This may not be provable from direct evidence, but by inference from other facts shown to exist. The witness must be confined to facts lying within his own knowledge, whether of things said or done. He cannot testify from information given by

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instrument void? If made by the consent of both parties? How must an instrument in writing be proved? When may it be proved without the evidence of the subscribing witness? If there are more than one subscribing witness?

1. What is the most satisfactory evidence? When this cannot be had, what does the law require? What is not necessary for the witness to know in all cases? Is this always provable from direct evidence? To what must the witness be confined? From what can he not testify? To

others, however worthy of credit they may be. Every living witness must be subjected to the ordeal of a cross-examination, for the purpose of ascertaining—

- (1.) What were his powers of perception.
- (2.) What were his opportunities for observation.
- (3.) His attentiveness in observing.
- (4.) The strength of his recollection.
- (5.) His disposition to speak the truth.

Information obtained by the repetition of a third party cannot be subjected to this test. It is frequently impossible to ascertain through how many persons the story has been transmitted from the original witness of the fact.

2. Such evidence is called hearsay evidence. This term is applied to that which is written as well as that which is spoken. Hearsay evidence is incompetent to establish any fact which in its nature is susceptible of being proved by witnesses who can speak from their own knowledge. It is to be presumed that there is better evidence which might be produced. Other grounds of exclusion are—

- (1.) Its intrinsic weakness.
- (2.) Its incompetency to satisfy the mind as to the existence of the fact.
- (3.) The frauds which might be practised under its cover.

These considerations combine to support the rule that hearsay evidence is totally inadmissible.

3. The evidence—

- (1.) Of general reputation,
- (2.) Of reputed ownership,
- (3.) Of public rumor,
- (4.) Of general notoriety,

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what must every living witness be subjected? For what purpose? What cannot be subjected to this test? What is frequently impossible to ascertain?

2. What is such evidence called? Is this term applied to written evidence? What is hearsay evidence incompetent to establish? What is generally to be presumed when such evidence is offered? What are other grounds of exclusion? What do these considerations combine to support?

3. What evidence is composed of the speech of third persons not under

is composed of the speech of third persons not under oath. This, however, is original, and not hearsay evidence. The subject of inquiry is the concurrence of many voices to the same fact. The principal question, in pedigree, is the parentage or descent of the individual. In order to ascertain that fact, it is important to know how he was acknowledged and treated by those who were interested in him, or sustained towards him any relation of consanguinity or affinity. The rule of admission in such cases is restricted to the declaration of deceased persons, who were related to the person whose pedigree is to be proved, and who were interested in the succession in question. General repute in the family, proved by a surviving member, comes under the same rule. The term pedigree embraces not only descent and relationship, but also the fact of birth, death, and the time when these events happened. These facts may be proved in all cases in the same manner as parentage or descent, where they occur incidentally, and in relation to pedigree. The entry by a deceased parent, or other relative, in a Bible, or other book, or in any paper, stating the fact of the birth, marriage, or death of a child, or other relative, with the time thereof, is regarded as the declaration of such parent or relative in the matter of pedigree.

4. The following are also admitted as proofs of pedigree:

- (1.) Inscriptions on tombstones.
- (2.) Engravings on rings.
- (3.) Inscriptions on family portraits.
- (4.) Charts of pedigree.

These must be proved to have been made by, or under the direction of a deceased relative; and when so proved are

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oath? Is this original or hearsay evidence? What is the subject of inquiry? What is the principal question in pedigree? To ascertain that fact, what is it important to know? To what is the rule of admission in such cases restricted? Under what rule does general repute come? What does the term pedigree embrace? How may these facts be proved? How is the entry of a deceased parent or relative of the birth or death of a child, or other relative, in a Bible, or other book or paper, regarded?

4. What other facts are admitted in evidence of pedigree? How must

admitted as his declarations. If they were publicly exhibited, and well known to the family, they are admitted on the ground of tacit and common consent. Evidence of reputation is admitted in cases of public or general interest; but the witness may not be able to specify the persons from whom he heard the declarations. Such evidence is admitted—

- (1.) In matters of public and general interest.
- (2.) In relation to ancient possessions.
- (3.) Declarations against interest.
- (4.) Dying declarations.

The general principle upon which dying declarations are admitted is, that they are declarations made when the party is at the point of death. Such situation is considered in law as creating an obligation equal to that which is imposed by an oath in a court of justice. Dying declarations are admissible only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. If the person making the declaration would have been incompetent to testify by reason of infancy or other causes, if living, his dying declarations are inadmissible. When a party offers the dying declarations of a deceased person in evidence, he must first show that they were made under a sense of impending death. This may be shown—

- (1.) By the language of the declarant.
- (2.) By his evident danger.
- (3.) By the opinion of his attendants, stated to him.
- (4.) By his conduct.
- (5.) By the general circumstances of the case.

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they be proved to have been made? How are they admitted? If they were publicly exhibited, and well known to the family? When is evidence of reputation admitted? What is the general principle upon which dying declarations are admitted? How is such situation considered in law? In what cases only are they admitted? If the person making the declaration would have been incompetent to testify if living? When a party offers a dying declaration, what must he first show? How may this be shown? If the deceased had any hope of recovery?

If the deceased had any hope of recovery, however slight it might have been, his declarations are inadmissible. That the declarations were made in answer to leading questions, or obtained by pressing and earnest solicitations, is no objection to their admissibility. The statement of the deceased must be clear and complete in itself. If it appears to have been intended to be qualified by some other statement which he was prevented from making, it will not be received. The judge must determine whether or not the evidence is admissible. The judge is to decide the question of admissibility. The jury are to decide the question of credibility. The jury are at liberty to weigh all the circumstances under which the declaration was made, and to give the testimony only such credit as they may think it deserves.

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## CHAPTER CXI.

### ADMISSIONS AND CONFESSIONS.

1. The term *admission* is usually applied to civil transactions. Confessions are acknowledgments of guilt. The admission of a party against himself, or against those identified with him in interest, may be received in evidence. The admission of one, partner may be given in evidence against all. The admission of a third party may be received in evidence against one who has referred another to him for information. In such case, the party

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If the declaration was made in answer to leading questions? Must the statement be complete? If it was intended to be qualified by some other statement? Who determines its admissibility? Who weighs the evidence when admitted, and determines its credibility? What are the jury at liberty to do?

1. To what is the term *admission* usually applied? What are confessions? What admissions may be received in evidence? Can the admission of a third party be received in evidence? To what degree is the

is bound by the declaration of the person referred to in the same manner, and to the same extent, as if they were made by himself. The admission of the wife will bind the husband only when she has authority to make such admission. The cases on this subject are generally those of implied authority, turning upon the degree the husband permits the wife to participate in the transaction of his affairs. The admissions of attorneys bind their clients in all matters relating to the progress and trial of the action.

2. The deliberate confession of crime is one of the strongest evidences of guilt. Their value depends upon the supposition that they are deliberately and voluntarily made. Confessions made by the prisoner to any person, at any time after the commission of the crime, are received in evidence. It has been held that a confession of guilt might be inferred from the conduct of the prisoner, and from his silent acquiescence in the statement of others respecting himself, and made in his presence; provided they are not made under circumstances which prevented him from replying to them. The justice of such a rule is subject to great doubt. The degree of credit to be given to confessions is a subject to be determined by the jury. Confessions are divided into two classes—

- (1.) Judicial confessions.
- (2.) Extra-judicial confessions.

Judicial confessions are those which are made before a magistrate, or in court, in due course of legal proceedings. It is necessary that they be free and voluntary, and be made with full knowledge of the nature and consequences of the confession. The following are examples of judicial confessions :

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admission of such third party binding? When will the admissions of the wife bind the husband? What will determine her agency? When will the admissions of an attorney bind his client?

2. What is one of the strongest evidences of guilt? Upon what does the value of confessions depend? What confessions are received in evidence? How has it been held that confessions might be inferred? By whom is the degree of credit to be given to confessions determined?



(1.) A confession made on the preliminary examination, taken in writing, pursuant to statute.

(2.) The plea of guilty, made in open court, to an indictment.

Either of these is sufficient for conviction. Extra-judicial confessions are those made elsewhere than before the magistrate or in open court. The whole confession must be taken together. The confession must be voluntary, and without the appliance of hope or fear. Confessions have been rejected, when the following language has been used to the prisoner :

(1.) "Unless you give me a more satisfactory account, I will take you before the magistrate."

(2.) "If you will tell me where my goods are, I will be favorable to you."

(3.) "It is of no use for you to deny it; for there are the man and the boy, who will swear they saw you do it."

If the confession is drawn from the witness by threats, it is not voluntary, and, therefore, cannot be received.

3. Although promises or threats have been made, yet if it appear to the satisfaction of the judge that their influence was totally done away before the confession was made, the evidence will be received. Instances of confession not strictly spontaneous may be admitted, and laid before the jury. Such are the following :

(1.) Confessions induced by spiritual exhortation, whether of a clergyman or of any other person.

(2.) Confessions induced by a solemn promise of secrecy, even confirmed by an oath.

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What two classes of confessions? What are judicial confessions? Must the prisoner be made acquainted with the effect of a judicial confession? How are judicial confessions made? For what are either of these sufficient? What are extra-judicial confessions? Must the whole confession be taken together? What language addressed to the prisoner has caused his confession to be rejected? If the confession be drawn from the witness by threats?

3. If promises or threats have been made, yet if it appear that their influence had ceased before the confession was made? What instances of confession, not strictly spontaneous, have been admitted and laid before

(3.) Confessions induced by a person's having been made drunk.

(4.) Confessions induced by a promise of some collateral benefit, no hope of favor being held out in respect to the criminal charge against him.

(5.) Confessions induced by deception practised on the prisoner, or false representations made to him for that purpose; provided there is no reason to suppose that the inducement held out was calculated to produce any untrue statement.

It is not necessary to warn the prisoner that his confession will be used against him. The object of excluding confessions not voluntarily made, is to exclude evidence not probably true.

4. When, in consequence of information obtained from the prisoner, any material fact is discovered, such as—

- (1.) The stolen property;
- (2.) The instrument of crime;
- (3.) The bloody clothes of the person murdered;

it is competent to show that such discovery was made in conformity with the information given by the prisoner. When a conspiracy or combination of several persons in the commission of a crime is established, the confession of one is evidence against all. Each is deemed to assent to or command what is done by any other, in furtherance of a common object. No person is amenable, criminally, for the acts of his servants or agents, unless a criminal design is brought home to him.

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the jury? Is it necessary to warn the prisoner that his confession will be used against him, if the confession be extra-judicial? What is the object of excluding confessions not voluntarily made?

4. When, in consequence of information obtained from the prisoner, any material fact is discovered, what is it competent to show? When a combination of several persons in the commission of a crime has been established, what effect does the confession of one have? What is each deemed to consent to or to command? Is any person amenable for the criminal acts of his servants or agents?

## CHAPTER CXII.

## EVIDENCE EXCLUDED.

1. The law excludes certain kinds of evidence, because greater mischief would probably result from its admission than from its rejection. The confidential attorney or counsellor of a client cannot be compelled, nor is he allowed to disclose confidential communications, either oral or written, made to him in his official capacity. Their clerks, agents, and interpreters are considered as standing in precisely the same situation as the attorney or counsel himself, and under the same obligation of secrecy. The executors of attorneys or counsellors cannot give testimony respecting papers coming into their hands, as the personal representatives of the attorney or counsellor. This protection extends to every communication which the client makes to his legal adviser for the purpose of professional advice or aid, upon the subject of his rights and liabilities. It does not cease at the termination of the suit. The seal of the law once fixed remains forever, unless removed by the party himself, in whose favor it was there placed. The attorney or counsel may give evidence in the following cases :

- (1.) When the communication was made before the attorney was employed.
- (2.) When it was made after his employment ceased.
- (3.) When the matter communicated was not in its nature private.

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1. Why does the law exclude certain kinds of evidence? What is the rule as to confidential communications made by clients to their attorneys and counsellors? What is the rule as to their clerks, agents, and interpreters? What is the rule as to their executors? To what does this protection extend? Does it cease with the termination of the suit? Can the party himself remove the seal? In what cases may attorneys and counsellors give evidence?

(4.) When the attorney is a subscribing witness.

2. The law of Papal Rome excludes confessions made to clergymen, that the guilty conscience may with safety disburden itself by penitential confessions, and by spiritual instruction and advice seek pardon and relief. Another ground of exclusion is, that the confession is not so much to the priest, as to the Deity, whom he represents; and therefore the priest, when appearing as a witness in his private character, may lawfully swear that he knows nothing of the subject. The law punishes the priest, if he reveals such communications. In Scotland, when a prisoner in custody has confessed his crime to a clergyman, in order to obtain spiritual advice, the clergyman is not required to give evidence of such confession. The law of England encourages confessions; and the minister to whom the confession is made is excused from presenting the offender to the civil magistrate. He is also enjoined not to reveal the facts confessed, under the penalty of irregularity. In all other respects, he is left to the full operation of the rules of the common law. He is bound by the common law to testify, when summoned. By the common law of evidence, there is no distinction between clergymen and laymen; and all confessions and other matters of evidence not confided to legal counsel, must be disclosed when required for the purposes of justice.

3. Physicians are required to give in evidence confessions made to them confidentially, while attending their patients in their professional character, unless exempted by statute. The following are privileged communications:

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2. What does the law of Papal Rome exclude? What are the grounds of exclusion? What is the rule in Scotland, where a clergyman has received the confession of a prisoner in custody? What does the law of England encourage? From what is the minister to whom the confession is made excused? What is he enjoined not to do? To what, in all other respects, is he left? To what is he bound by the common law? What distinction at common law does not exist?

3. What is the rule as to the confessions made to physicians confidentially, while attending their patients in their professional character?

- (1.) Official transactions between the head of the department of State and his subordinate officers.
- (2.) The proceedings of grand-juries.
- (3.) Communications between husband and wife.
- (4.) Disclosures offensive to public morals.

Grand-jurors are sworn to secrecy. It is the policy of the law to keep secret the preliminary inquiries respecting the guilt or innocence of the accused. The clerk of the grand-jury, and also the district attorney, are placed under the same restrictions of secrecy. A grand-juror may be asked if twelve of their number agreed to the indictment, the certificate of the foreman not being conclusive evidence of the fact. Confidential communications between husband and wife are excluded, on the ground that the married state requires that there should be the most unlimited confidence between husband and wife; and that nothing should be extracted from the bosom of one, confided to him or to her by the other. After the parties are separated by death or otherwise, they are prohibited from disclosing any conversations had between them.

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## CHAPTER CXIII.

### THE NUMBER OF WITNESSES.

1. At common law, the crime of treason was proved by the evidence of one credible witness. In this country, two witnesses to the same overt act, or to different acts of the same treason, are required to convict, or a voluntary

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What four privileged communications are named? What is the policy of the law as to grand-jurors? What question may be put to a grand-juror? On what ground are confidential communications between husband and wife excluded? If the parties are separated by death or otherwise?

1. How many witnesses are required at common law, to prove the crime of treason? How many are required by statute law? How many wit-

confession in open court. In proof of the crime of perjury two witnesses are required, or one witness strongly corroborated. Documentary or written evidence may be relied on to convict of perjury.

(1.) When such evidence of the falsehood of the matter sworn to came from the prisoner with circumstances showing the corrupt intent.

(2.) In cases when the matter so sworn is contradicted by a public record, proved to have been well known to the prisoner when he took the oath.

(3.) In cases when the party is charged with taking an oath contrary to what he must necessarily have known to be true, the falsehood being shown by his own letters relating to the fact sworn to.

2. In England two witnesses are required to attest a will. In the New England States, New Jersey, Maryland, South Carolina, Georgia, Alabama, and Mississippi, three witnesses are required. In the other States, two witnesses are required. In some of the States it must be attested in the presence of the testator. In New York this is not necessary. If the testator be near enough to see and identify the instrument, he is held to be present. If the testator be in a State of insensibility at the time of the attestation, it is void in most of the States. In Vermont a will is required to be under seal. It is not necessary that the witnesses attest in the presence of each other, and that all attest at the same time, unless the statute expressly requires it. If the testator intended to sign each separate sheet of the will, but signed only two of them, being unable to sign the others, the will is incomplete.

nesses are necessary to convict in case of perjury? When may documentary evidence be relied upon to convict of perjury?

2. In England how many witnesses are required to attest a will? In what States are three witnesses required? In what States are only two witnesses required? How must it be attested in some of the States? How in New York? When is the testator held to be present? If the testator be in a state of insensibility at the time of the attestation? In what State must a will be under seal? Is it necessary that the witnesses attest in the presence of each other? If the testator intended to sign each separate sheet and signed only a part, and then became unable to sign the others?

3. The revocation of a will must be proved—

(1.) By some subsequent will or codicil inconsistent with the former will.

(2.) By some other writing declaring the revocation, and duly attested.

(3.) By burning, tearing, cancelling, or obliterating the same by the testator, or in his presence, and by his direction and consent.

A revocation is an act of the mind, demonstrated by some outward and visible sign or symbol of revocation. The statute is satisfied by any act of spoliation, or destruction deliberately done upon the instrument with the intention of revoking it. The declarations of the testator accompanying the act are admissible in evidence to explain the intention. Where the testator threw his will into the fire, and it was saved without his knowledge, it was held to be a sufficient revocation. The testator being angry with the devisee began to tear his will, but being afterwards pacified he fitted the pieces carefully together, saying he was glad it was no worse: the act was held not to be a revocation.

4. When parties have put their engagements into writing, it is presumed that their whole engagement was reduced to writing. Parol evidence cannot be introduced to contradict or vary the terms of a valid written instrument. The terms of every written instrument are to be understood in their plain, ordinary, and popular sense, unless they have acquired a peculiar sense, or unless the context evidently shows that they must be understood in

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3. How must the revocation of a will be proved? What is a revocation? With what is the statute satisfied? What is admissible evidence to explain the intention? When the testator threw his will into the fire, and it was saved without his knowledge? When the testator became angry with the devisee, and began to tear his will, but being afterwards pacified fitted the pieces carefully together, saying he was glad it was no worse?

4. When the parties have put their engagement into writing, what is presumed? For what purpose can parol evidence not be introduced? How are the terms of a written instrument to be understood? What evidence may be introduced to aid the court in reading the instrument?

some other sense. The evidence of experts is admitted to aid the court in reading the instrument. The rule excluding parol evidence, is not infringed by the admission of parol evidence to show that the instrument is entirely void, nor to show that it never had any legal existence or binding force, either by reason of fraud, or for want of due execution and delivery, or for the illegality of the subject. Want of consideration may be proved in all cases, to show that the instrument is not binding; except in cases of instruments under seal, and negotiable commercial paper within the statute in the hands of an indorsee for value. Fraud vitiates all contracts. Fraud practised by the party seeking the remedy, upon him against whom it is sought, is fatal to his claim. Want of consideration and fraud may be shown by parol evidence. It may be shown by parol evidence—

(1.) That the contract was made for the furtherance of objects forbidden by the law.

(2.) That the instrument was obtained by duress.

(3.) That the party was incapable of binding himself, either by reason of some legal impediment, such as infancy, or coverture, or insanity; or from a temporary cause, such as drunkenness.

(4.) That the instrument came into the hands of the plaintiff without any final delivery by the party charged. The rule excludes parol evidence of the conversations of the parties, but not the evidence of collateral facts.

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By what is the rule, excluding parol evidence, not infringed? For what purpose may parol evidence be introduced, in actions upon written instruments? When can want of consideration be proved? What is the effect of fraud upon a contract? If the fraud has been practised by the party seeking the remedy upon the other party? How may want of consideration and fraud be shown? What other facts may be shown by parol evidence?



## CHAPTER CXIV.

### GENERAL PRINCIPLES OF EVIDENCE.

1. THE symbols of nationality and sovereignty are the national flag and seal. The public acts, decrees, and judgments under this seal are received as true and genuine. It is not necessary to prove the seals of foreign admiralty and maritime courts. It is unnecessary to prove—

- (1.) Things which must have happened according to the ordinary course of nature.
- (2.) The course of time, or of the heavenly bodies.
- (3.) The ordinary public fasts and festivals.
- (4.) The coincidence of days of the week with the days of the month.
- (5.) The meaning of words in the vernacular language.
- (6.) Legal weights and measures.
- (7.) Matters of public history affecting the whole people.

The court will take notice of—

- (1.) The territorial extent of the jurisdiction and sovereignty exercised by their own governments.
- (2.) The local divisions of their country.
- (3.) The relative position of each local division.

The courts will recognize—

- (1.) The political condition of their own government.
- (2.) Its essential political agents or public officers.
- (3.) Its political operations and actions.

2. The true question in trials of fact is, whether there is sufficient probability of the truth of the fact at issue, and not whether it is possible that it may be false. A fact is

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1. What are the symbols of nationality? What are received as true and genuine? What is it necessary to prove? Of what will the courts take notice? What will the courts recognize?

2. What is the true question in trials of fact? When is a fact said to

said *to be proved*, when it is established by *competent* and *satisfactory* evidence. Every sane man is presumed to contemplate the natural and probable result of his own acts. An intention to murder is conclusively inferred from the deliberate use of deadly weapons. An infant under the age of seven years is conclusively presumed to be incapable of committing a felony. If a woman act in conjunction with her husband in the commission of a felony, except treason or homicide, it is conclusively presumed that she acted under his coercion, and consequently without any guilty intention. When two persons have perished in the same calamity, the circumstances of their death being unknown, by the Roman law, if they were a father and son, and the son was under the age of fourteen, it was presumed that he died first. If over that age, it was presumed that the father died first. The French Code has regard to the ages of fifteen and sixty, presuming that of those under fifteen, the youngest perish first; and that of those over sixty, the oldest perish first. If the parties were between these ages, but of different sex, the male is presumed to have survived. If they were of the same sex, the younger is presumed to have survived. The French rule has been incorporated into the Code of Louisiana.

3. Some presumptions are conclusive; other presumptions are disputable. Disputable presumptions are the result of the general experience of the connection between certain facts or things, the one being usually found to be the companion or effect of the other. The law infers the

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be proved? What is every sane man presumed to contemplate? From what is an intention to murder conclusively presumed? What is the conclusive presumption as to infants under seven years of age? If a woman act in conjunction with her husband in the commission of crime, what is conclusively presumed? If two persons have perished by the same calamity, and the circumstances of their death are unknown, which is presumed by the Roman law to have perished first? What is the French law upon this subject? Into what Code has the French rule been incorporated?

3. What two classes of presumptions? Of what are disputable presumptions the result? From what does the law infer the existence of

existence of one fact from the proof of the existence of another fact, in the absence of all opposing evidence. The law presumes that every unlawful act was criminally intended, until the contrary be proved. On the charge of murder, malice is presumed from the fact of killing, unaccompanied with circumstances of extenuation. The burden of disproving the malice is thrown upon the accused. If a person is found in possession of the fruits of crime soon after its commission, this is evidence of guilty possession; and if unexplained, either by direct evidence, or by the attending circumstances, or by the character and habits of life of the possessor, it is conclusive. Where a person was indicted for arson, and proof was given that property, which was in the house at the time it was burnt, was found in possession of the prisoner, it was held to raise a probable presumption that he was present and concerned in the offence. In case of murder, accompanied by robbery, the like presumption is raised. Post-marks on letters are evidence that the letters were in the post-office at the time and place thereon specified. If a letter is sent by post, it is presumed, from the known course in that department, that it reached its destination at the regular time, and was received by the person to whom it was addressed. It is presumed, until the contrary be proved, that every man obeys the laws, and performs his official and social duties. Every man is presumed to be innocent, until he is proved to be guilty.

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one fact? What does the law infer from every unlawful act? From what is malice presumed on the charge of murder? Upon whom is the burden of disproving the malice? If a person is found in possession of the fruits of crime soon after its commission? Where a person was indicted for arson, and proof was given that property, which was in the house at the time it was burnt, was found in possession of the prisoner, what presumption was this held to raise? In case of murder accompanied by robbery? Of what are post-marks on letters presumptive evidence? If a letter is sent by post, what is presumed? What is the presumption as to obeying the laws? Until what time is every man presumed to be innocent?

## CHAPTER CXV.

## WEIGHT OF EVIDENCE.

1. THE most difficult task for the jury is to weigh accurately the evidence of the witnesses examined before them. There is no difficulty in weighing different parcels of different classes of goods. We have standard weights, duly sealed; and by placing these parcels in one scale, and sealed weights in the other, we can tell exactly how many pounds and ounces each parcel weighs. If several parcels belong to one package, we can tell precisely the weight of such package by adding together the weight of the several parcels belonging to the package. So, if two packages of different parcels are to be weighed, and the balance of the weight determined, this question can be easily decided by means of standard weights.

2. Two lawyers come before a jury with their two packages of evidence, each composed of different parcels varying in bulk and density, and ask the jury to weigh each parcel in each package separately, and to give the aggregate weight of the parcels in each package. They also ask the jury to determine the balance of the weight of one package of evidence over the other package. How are the jurors to perform this task? They have no standard weights, duly sealed, which they can place in one of the scales of justice, and a parcel of evidence in the other scale, and be able to give the exact weight of the parcel in pounds and ounces. Each juror is obliged, to a great extent, to form his own standard, by which he must weigh

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1. What is the most difficult task for the jury? How can we ascertain the weight of different parcels? How do we ascertain the difference of the weight of different packages of different parcels?

2. With what do the lawyers come before the jury? What do they ask of the jury? Have the jury any standard weights by which they can give the exact weight of evidence presented to them? By what does each juror weigh the credibility of each witness? When only will the

the credibility of each witness. The court seldom interferes with the decision of the jury on questions of fact; and never unless the verdict is clearly against evidence, or without any evidence to support it. Hence it is important to approximate, if we cannot establish, a *general standard* by which jurors may be governed in weighing evidence.

3. The jury have nothing to do with the question which may arise as to the competency of the witness to testify. That question belongs exclusively to the court. It is the *credibility*, and not the competency, of the witness which is to be weighed. We may adopt a scale by which we may measure the weight of the evidence of each witness, or upon which we may mark the weight as it is determined by the balance in the mind of the jurors. The scale may be made in the following form:

SCALE OF CREDIBILITY.

10
9
8
7
6
5
4
3
2
1
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court interfere with the decision of the jury on questions of fact? What is important for us to approximate?

3. Are the jurors to decide any question in reference to the compe-

4. In order to illustrate the use of the scale of credibility, let us suppose that the issue to be tried by the jury is the *sanity* of a testator, at the time of making his last will and testament. One party alleges that the testator was of sound disposing mind and memory at the time of making and executing his will, and the other party denies that he was of sound and disposing mind at that time. The issue of sanity is to be determined by the jury. Counsel for the executors introduce in support of the will Dr. Benjamin McCluer, one of the subscribing witnesses to the will. He swears to the due execution of the will; "that he has been in practice as a physician and surgeon for twenty years; that he had been the family physician in the testator's family for two years; that he was the physician of the testator at the time he made his will, and to the time of his death; that in the course of his practice he had witnessed many cases of insanity, and attended several patients affected with that disease. He further says, that the testator was of sound and disposing mind and memory at the time of executing his will, and up to the time of his death, which occurred about six weeks after." Witness, on being cross-examined by counsel for the contestants, stated that "he was not interested in the result of the suit; that no relative of his by consanguinity or affinity was to receive any benefit from sustaining the will."

The evidence of Dr. McCluer is of the highest character known to the law, and being entirely unimpeached or weakened by the cross-examination, must be placed at *ten* on the scale of credibility.

5. Counsel for the executors then called Dr. James Peabody, who testified that he affixed his signature to the

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tency of the witness? To whom does that question exclusively belong? What is the jury required to weigh? What scale may be adopted?

4. In order to illustrate the scale of credibility, what issue is presumed to be before the jury? What does one party allege, and the other deny? Who is the first witness produced on the part of the executors? To what facts does he swear on his direct examination? On his cross-examination? Where should this witness be placed on the scale of credibility?

5. Who is the second witness on the part of the executors? To what

will as a subscribing witness at the request of the testator; that the testator signed the will in witness's presence, and at the time declared the instrument so subscribed by him to be his last will and testament; that he believed the testator to be of sound and disposing mind and memory at the time of executing the said will." On being cross-examined, witness said: "I have practised as physician and surgeon for twelve years; I was not intimately acquainted with the testator; I was called to see him twice as consulting physician with Dr. McCluer; the second time I was called, I witnessed the execution of his will; my attention was not particularly called to the state of the mind of testator, but if there had been any symptoms of insanity I think I should have noticed them."

The opportunities of this witness to discover insanity have not been equal to the opportunities of the previous witness. He is not therefore entitled to so high a rank on the scale of credibility as the previous witness, and is clearly entitled to stand at *nine* on that scale. The validity of the will is fully established by these two witnesses, unless evidence of greater weight can be produced on behalf of the contestants, and the counsel for the executors may here rest his case.

6. The counsel for the contestants then produced Dr. John Bradbury, who testified as follows: "I have practised as physician and surgeon for twenty years; I have had many cases of insanity under my treatment; I knew the testator well; I have known him from a child; he has not been of sound and disposing mind and memory at any time for the last four years." On cross-examination, witness says: "I am the nephew of the testator; I had a quarrel with him about three months before his death; he made a will about six months before his death, giving

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facts does he swear on his direct examination? On his cross-examination? Where should this witness be placed on the scale of credibility? What is established by these two witnesses? How can this conclusion be reversed? What may the counsel for the executors here do?

6. Who is called as a witness by the counsel for the contestants? To what facts does he swear on his direct examination? On his cross-ex-

me most of his property; I did not know, at the time of his death, that he had made another will, revoking his former will; I went before the surrogate, for the purpose of having the first will proved; I then first heard that he had made a second will, giving all his property to his brother." The direct examination of this witness would have placed him at *ten* on the scale of credibility; but from the fact which comes out on the cross-examination, that witness had had a quarrel with the testator, and notwithstanding he swore positively, on his direct examination, that the testator had not been of sound mind for four years before his death, yet he admitted that he had produced another will, made by testator within six months of his death, before the surrogate, for the purpose of probate. The credibility of the witness is so badly shaken by the cross-examination, that he cannot be placed above *four* on the scale of credibility.

7. The counsel for the contestants then call Dr. Edwin Bradbury, who testified as follows: "I have practised as a physician and surgeon for twelve years; I have had several cases of insanity under my treatment; I have known the testator from my early childhood; I am sure that he has been of unsound mind for the last four years of his life." On cross-examination, witness said: "I am a nephew of the testator, and brother of the last witness examined; I have not practised as a physician all the time for the last twelve years; I cannot give the name of any patient who has been under my treatment for insanity; I cannot tell what year I had such patient under my treatment." The evidence of this witness is so much shaken by his cross-examination, that he is not entitled to be placed above *five* on the scale of credibility.

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amination? Where would his direct examination place him on the scale of credibility? What is the effect of his cross-examination? Where should he be placed on the scale of credibility?

7. Who is the next witness called by the counsel for the contestants? To what facts does he swear on his direct examination? On his cross-examination? What is the effect of his cross-examination? Where should he be placed on the scale of credibility?



8. The counsel for the contestants then called Dr. John Smythe, who testified as follows: "I was called to see the testator about four years before his death; I have practised as a physician and surgeon for twelve years; I called to see testator three or four times about four years ago; I believed him to be insane at that time, and so expressed myself to several persons about that time." On cross-examination, witness says: "I cannot state any thing he said, or any thing he did, which led me to believe he was insane; I cannot say what the symptoms of insanity are; I cannot say whether such insanity would be likely to continue for four years." If testator were of unsound mind four years before he made his will, it would be a circumstance from which some slight inference of his insanity at the time of making his will might be drawn; but such evidence has a bearing so remote upon the issue, that, if admitted at all, it should not stand higher than *one* on the scale of credibility. The counsel for the contestants here closes his part of the case.

9. The counsel for the executors then proceeded to fortify and sustain the evidence of his first witnesses, and rebut the evidence given on the other side, by presenting additional and cumulative evidence. The first witness called for this purpose was Dr. John Ford, who testified as follows: "The testator was under my care, while he was spending the time in the country four years ago, for a period of three months; I saw him almost every day; he was of sound mind at that time, and showed no symptoms of insanity."

This evidence rebuts the evidence of two witnesses on the part of the contestants, who swear to insanity of testator for four years; and although relating to a re-

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8. Who is the third witness called by the counsel for the contestants? To what facts does he swear on his direct examination? On his cross-examination? Where should this witness stand on the scale of credibility? What may the counsel for the contestants here do?

9. What does the counsel for the executors then proceed to do? How? Who is the first witness called for this purpose? To what facts does he

mote period, should stand at *five* on the scale of credibility.

10. The counsel for the executors then called Dr. Moses Fog, who testified as follows: "I know testator; he was a patient of mine for three months three years ago; he was of sound and disposing mind and memory at that time; if there had been any symptoms of insanity, I should have noticed them." This witness should be placed on the scale of credibility at *five*. This completes the evidence presented on each side; and the jury are to calculate the sum of the weight of evidence produced by each party, and to state in whose favor the balance of the weight of evidence lies.

11. The evidence as weighed stands as follows:

<i>For Executors.</i>	<i>Weight.</i>	<i>For Contestants.</i>	<i>Weight.</i>
Dr. Benjamin McCluer....	10	Dr. John Bradbury.....	4
Dr. James Peabody.....	9	Dr. Edwin Bradbury.....	5
Dr. John Ford.....	5	Dr. John Smythe.....	1
Dr. Moses Fog.....	5		—
	—		10
	29		

Balance in favor of executors—19.

12. A competent witness may swear positively to a material fact; yet it may appear on his cross-examination, or it may be shown by other witnesses, that his character is so infamous that his evidence is entitled to no credit with the jury. The evidence of such witness would be placed at *zero* on the *scale of credibility*. An infant of very ten-

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swear on his direct examination? On his cross-examination? Where should this witness stand on the scale of credibility?

10. Who is the next witness called by counsel for executors? To what facts does he swear on his direct examination? On his cross-examination? Where should this witness be placed on the scale of credibility? What does this complete? What are the jury now to calculate? What are they to state?

11. How does the evidence as here weighed stand? In whose favor is the balance? To what amount?

12. What may appear on the cross-examination of a competent witness who swears positively to a material fact? What is the effect of such cross-examination? Where should such evidence be placed on the scale

der age is competent to give evidence, if he understands the nature of an oath and the consequence of swearing falsely ; yet from the fact of the tender age of the infant, and that the story he tells may have been taught to him by others, his evidence should be received with great caution ; and, if uncorroborated, should not be placed higher than *one* on the scale of credibility.

13. An accomplice in the commission of crime is a competent witness against others engaged in the commission of the same crime, and his evidence may be submitted to the jury, although he may be entirely uncorroborated ; yet his evidence should never be placed above *one* on the scale of credibility. When a witness varies in a material point from his evidence given on a former occasion, his evidence should not be placed above *two* on the scale of credibility.

14. Written evidence is entitled to greater weight than oral. The best evidence of a contract is the contract reduced to writing, signed by the parties to be bound thereby, and attested by a subscribing witness. If this contract has been lost or destroyed, the next best evidence in the scale of credibility is a copy of the contract duly proved. If there is no copy of the contract, parol evidence of the contract and of its terms may be given. The first class would stand at *ten*, on the scale of credibility ; the second class should not be placed higher than *six*, and the third class should not be placed higher than *four*.

15. A large majority of men are innocent of crime ; and the law therefore presumes that all are innocent, until

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of credibility ? When is an infant of tender age a competent witness ? Where should his evidence be placed on the scale of credibility ? Why ?

13. Is an accomplice a competent witness ? Where should his evidence be placed on the scale of credibility ? If a witness varies in a material point from his evidence given on a former occasion ?

14. Which stands highest on the scale of credibility, written or oral evidence ? What is the best evidence of a contract ? What evidence stands next to the contract itself ? What evidence stands next to a copy ? How should these three classes of evidence be placed on the scale of credibility ?

15. Why are all men presumed to be innocent of crime until proved to

they are proved guilty. If in weighing the evidence for and against the prisoner the beam of the scales is horizontal, and the scale in which the guilt of the prisoner is placed is not carried down, but is evenly balanced by the scale in which the proof and presumption of innocence is placed, this fact raises a doubt in the minds of the jurors, and the prisoner is entitled to the benefit of the doubt, and must be acquitted.

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## CHAPTER CXVI.

### REFEREES.

1. REFEREES are judicial officers appointed by the court. The place of conducting the reference is regarded as a branch of the court. The witnesses and counsel are there to be governed by the same rules which would control them in a court of law. All issues in an action may be sent to a referee, upon the written consent of the parties, except where an infant is a party. When the parties do not consent, the court may direct a reference—1. When the trial of an issue of fact will require the examination of a long account; 2. When the taking of an account is necessary; 3. When a question of fact, other than upon the pleadings, shall arise. A certified copy of the order of reference should be served on the referee. This is his authority under which he acts. It would be irregular to take any action in the case until such service. The referee

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be guilty? What circumstances in weighing the evidence should raise a doubt in the minds of the jurors? Who is entitled to the benefit of this doubt?

1. What is the official character of a referee? How is the place of conducting the reference regarded? By what rules are the witnesses and counsel there governed? What issues may be sent to a referee on consent? If the parties do not consent, when may the court direct a reference? What should be served on the referee? What is the authority under which he acts? Can he take any action before such ser-

makes his report to the court by which he was appointed. In his report he states the facts found, and conclusions of law, separately. The court will not interfere with the report of a referee on a question of fact, unless it is *clearly against evidence*, or in direct violation of some rule of law.

2. The referee is clothed with all needful authority to determine every thing which properly belongs to the trial of the action. The referee is bound by the decisions of the general term of the Supreme Court, until reversed by the Court of Appeals. The referee takes the place of the jury as well as of the court. Where there is the slightest reason to suspect that any influence beyond what has transpired at the trial, and in the presence of the parties, has been brought to bear upon the minds of the jurors, the verdict must be set aside. The referee should try the case before him with the greatest discretion and impartiality. The reasons which would lead the court to set aside the verdict of the jury, would lead the court to set aside the decision of the referee on a question of fact.

3. A referee must not take the statement of a witness out of court. On a trial before him he has the power to allow amendments to any pleadings or summons in the same manner as the court could do upon such trial. He has not the power to allow the name of a party to be stricken out. The referee should not rely on depositions produced before him, but he should take down the evidence from the witnesses themselves. The referee can compel the attendance of witnesses by attachment, and punish them for a contempt for non-attendance, or refusal to be sworn, or to testify in the same manner as the court could do. Referees may, in their discretion, open a case

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vice? To whom does the referee make his report? What does he state in his report? When only will the court interfere with the report on a question of fact? On a question of law?

2. With what authority is the referee clothed? By what is the referee bound? Of whom does he take the place? When will the verdict of a jury be set aside? When should the report of a referee be set aside?

3. Can the referee take the statement of a witness out of court? What amendments may he allow in a trial before him? What evidence should he receive? How can he compel the attendance of witnesses?

after it has been submitted, and hear further testimony. A referee cannot be a witness in a case referred to him. A referee may refuse to hear further testimony against the character of a witness, or in support of his character.

4. A referee is required by law to take a prescribed oath before entering upon his duty; and yet it often happens that no such oath is taken. If the parties proceed with the reference without objection, they are held to have waived their right to object. The oath is usually in the following form:

"I, John Doe, referee appointed in this action, do swear, that I will faithfully and fairly hear and examine this action, and make a just and true report thereon, according to the best of my understanding."

The oath may be administered by any person authorized to take affidavits to be read in the court in which the suit is pending. When the referee is ready to proceed with the trial, the counsel for the party who holds the affirmative of the issue to be tried opens the case before the referee; states the substance of the pleadings, and the issues formed by the pleadings, with the evidence he proposes to produce on the part of his client. He then calls his witnesses, who are first examined by the party producing them, and then cross-examined by the counsel for the other party.

5. The referee has power to administer an oath to the witnesses. The form of the oath is as follows:

"The evidence you shall give in this issue, joined in the Supreme Court, between A. B., plaintiff, and C. D., defendant, shall be the truth, the whole truth, and nothing but the truth. So help you God."

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For what purpose may they open a case after it has been submitted? What testimony may he refuse to take?

4. What is a referee required to take before commencing the trial? If the parties proceed to the trial without objection? What is the form of the oath? Before whom may it be taken? Which party opens the case? What does he state? By whom are the witnesses examined? By whom cross-examined?

5. Who administers the oath to the witnesses? What is the form of

A witness has a right to consult counsel in the presence of the referee. The advice of counsel must be given under the eye, and in the hearing, of the referee. To save the expense and delay of proving certain facts, the attorneys may admit these facts; but an attorney acting for an infant cannot make an admission for him to his disadvantage. It is for the party holding the affirmative to make out the preponderance of proof.

6. The rules of evidence are the same before a referee as before a jury. Improper testimony must not be heard before a referee any more than before a jury. The *credibility* of the witnesses is to be weighed by the referee. The weight of evidence depends on the *number*, the *ability*, and *integrity* of the witnesses. One witness is sufficient to prove a fact in most cases; yet a number of witnesses *corroborates* and *confirms*. The ability of the witness is important in determining his credibility. The integrity of the witness is also important in weighing his evidence. A witness's veracity may become suspected from a variety of circumstances, although he may intend to speak the truth. He may be on terms of intimate friendship with the party on whose behalf he is called. He may have a pecuniary interest in the result. He may be of a near degree of relationship. He may be an inveterate enemy of the other party. He may swear to facts which are shown to be untrue by surrounding circumstances, though no other person were present. The *deportment* of the witness on the stand affects his credibility. Does he give his answers readily, and with an air of probability? Does he persist in the same premeditated recital and

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the oath? When may a witness consult counsel? When must the advice of counsel be given? When may the parties admit certain facts? For what purpose? Which party must present the preponderance of proof?

6. What rules of evidence govern the trial before a referee? By whom is the credibility of the witness weighed? Upon what does the weight of evidence depend? What number of witnesses is required to prove a fact in a civil case? What is the effect of additional witnesses? From what circumstances may the veracity of a witness be suspected? What

uniformity of expression? Does his account betray any doubt or uncertainty in his own mind? Is his general reputation such that he is not to be believed under oath?

7. When one party has closed his evidence, the counsel for the other party opens his case, introduces his evidence, and rebuts the evidence given on the other side. After he has closed his evidence, the first party may introduce further evidence to corroborate and sustain his former evidence. The party holding the negative of the issue sums up the case first, and the party holding the affirmative closes the argument, and the case is submitted to the referee. The referee then adjourns the case indefinitely, so that he may deliberately weigh the evidence, and make up his report of the facts found by him, and his conclusions of law.

8. Under a decree of foreclosure, the court may appoint a referee to make the sale of the mortgaged premises. The referee gives the required notice, and superintends the sale of the premises, which must be made at public auction. The referee executes, acknowledges, and delivers the deed to the purchaser, and reports to the court his proceedings thereon.

9. In a partition suit, a referee may be appointed to advertise and sell the premises. He must then make his report of sale to the court, and have the same confirmed. When the sale is confirmed, he executes his deed to the purchaser, and pays the amount received to creditors and heirs, pursuant to the decree of the court. He makes his final report to the court, with the vouchers for all moneys

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deportment of the witness affects his credibility? How does his character affect his credibility?

7. When one party has closed his evidence before the referee, what is the next action? After the second party has closed his evidence, what may the first party do? Which party sums up the case first? After both parties have summed up the case, what action is taken by the referee? For what purpose?

8. Under a decree of foreclosure, for what purpose may the court appoint a referee? What action does the referee take?

9. In a partition suit, for what purpose is a referee appointed? What action is taken by the referee?



paid under the decree. An order is then entered confirming the final report.

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## CHAPTER CXVII.

### THE MONROE DOCTRINE.

1. On the 2d day of December, 1823, James Monroe, President of the United States, sent his annual message to both houses of Congress. In that memorable message, he announced to Congress, and to all the nations of the civilized world, the *settled policy* of this nation in its foreign relations. He says: "In the wars of the European powers, in matters relating to themselves, we have never taken any part; nor does it comport with our policy to do so. The political system of the European powers is essentially different from that of America. We owe it, therefore, to candor and to the amicable relations existing between the United States and those powers, *to declare* that we should consider any attempt on their part to extend their system *to any portion of this hemisphere* as dangerous to our peace and safety.

2. "Our policy is not to interfere in the internal concerns of Europe, or of any of the European powers. It is impossible that these powers should extend their system *to any part of America* without endangering our peace and happiness. With the existing colonies or dependencies of any European power we have not interfered, and shall not interfere. But with the governments who have declared their independence, and have maintained it, and whose independence has been acknowledged, we could not view any interposition for the purpose of oppressing them, or controlling in any other manner their destiny, in any other light than as the manifestation of an unfriendly disposition towards the United States."

3. The doctrine announced by President Monroe as the settled policy of this nation, more than forty years ago, has been strictly adhered to on the part of the United States from that time to the present. It was so long acquiesced in by the European powers, that it began to be regarded as a part of the common law of nations. It has become as firmly fixed, and as warmly cherished in the heart of every American citizen, as if it were a part of the national constitution. An occasion has now arisen to test the question whether this doctrine is a myth or a reality. There is a direct interference on the part of one of the European powers in the affairs of an independent American State. A republic has been overturned, and a monarchy established on its ruins. The whole nation waits with intense anxiety for some vigorous movement on the part of the government. Delay and hesitation engender doubt and despondency. From the throbbing heart and the trumpet tongue of the people comes the mandate, "Onward!"

## CHAPTER CXVIII.

## FORM OF A WILL.

IN THE NAME OF GOD, AMEN: *I, John Foster, of the city, county, and State of New York, merchant, being of sound and disposing mind and memory, and considering the uncertainty of this life, do therefore make, ordain, publish, and declare this to be my last WILL and TESTAMENT: That is to say,*

FIRST. *After all my lawful debts are paid and discharged, I give and devise to my wife, Mary Foster, my house and lot, No. 230 Fifth Avenue, New York City, which devise is to be in lieu of her right to dower in all my real estate. I also give and bequeath to my said wife one hundred thousand dollars, to be paid to her out of my personal property.*

SECOND. *I give and bequeath to each of my three daughters, Mary, Catherine, and Elizabeth, the sum of fifty thousand dollars.*

THIRD. *I give and devise to my son John my house and lot known as No. 10 West Thirty-fourth Street, New York City. I also give and bequeath to my said son John the sum of seventy-five thousand dollars.*

FOURTH. *I give and devise to my son James all*

*the rest, residue, and remainder of my real estate. I also give and bequeath to him the rest, residue, and remainder of my personal property.*

*Likewise, I make, constitute, and appoint my wife, Mary Foster, to be executrix, and my son, James Foster, to be executor of this, my last will and testament, hereby revoking all former wills by me made.*

*IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal, the eighth day of June, in the year of our Lord one thousand eight hundred and sixty-five.*

*John Foster. [L.S.]*

*Subscribed by John Foster, the testator named in the foregoing will, in the presence of each of us; and at the time of making such subscription, the above instrument was declared by the said testator to be his last will and testament; and each of us, at the request of said testator, and in his presence, and in the presence of each other, signs his name as a witness thereto, at the end of the will.*

**WITNESS:**

*William L. Jones,*

*Residing at 654 Broadway, N. Y. City.*

*Thomas Preston,*

*Residing at 31 W. 14th St., N. Y. City*

*John Allen,*

*Residing at 417 4th Avenue, N. Y. City.*





